

THE
STATUTE LAW
OF
KENTUCKY;

WITH NOTES, PRÆLECTIONS, AND OBSER-
VATIONS ON THE PUBLIC ACTS.

COMPREHENDING ALSO,
*THE LAWS OF VIRGINIA AND ACTS OF PARLIAMENT
IN FORCE IN THIS COMMONWEALTH;*
THE CHARTER OF VIRGINIA,
THE FEDERAL AND STATE CONSTITUTIONS,

AND SO MUCH OF
THE KING OF ENGLAND'S PROCLAMATION IN 1763, AS RE-
LATES TO THE TITLES TO LAND IN KENTUCKY.

TOGETHER WITH
A TABLE OF REFERENCE TO THE CASES ADJUDI-
CATED IN THE COURT OF APPEALS.

IN THREE VOLUMES.

BY WILLIAM LITTELL, ESQ.

SIC VOS NON VOBIS, &c.—VIRGIL.

VOLUME I.

FRANKFORT, (KEN.)

PRINTED BY AND FOR WILLIAM HUNTER.

1809.

UNITED STATES OF AMERICA, }
DISTRICT OF KENTUCKY, } sct.

BE IT REMEMBERED, that on the twenty-second day of July, in the year of our Lord one thousand eight hundred and nine, and in the thirty-fourth year of the Independence of the United States of America, WILLIAM HUNTER, of the said district, hath deposited in this office, the Title of a Book, the right whereof he claims as Proprietor, in the words and figures following, to wit :

“ The Statute Law of Kentucky ; with notes, prælections, and observations
“ on the public acts. Comprehending also, the Laws of Virginia and Acts of
“ Parliament in force in this commonwealth ; the Charter of Virginia, the Fede-
“ ral and State Constitutions, and so much of the King of England's Proclama-
“ tion in 1763, as relates to the titles to land in Kentucky. Together with a
“ Table of Reference to the Cases adjudicated in the Court of Appeals. In
“ three volumes. By WILLIAM LITTELL, Esq. *Sic vos non vobis, &c.*—Virgil.
“ Volume 1.”

IN CONFORMITY of the act of Congress of the United States, entitled “ An act
“ for the encouragement of learning, by securing the copies of Maps, Charts, and
“ Books, to the Authors and Proprietors of such copies, during the terms therein
“ mentioned ;” and also to an act, entitled “ An act supplementary to an act, en-
“ titled an act for the encouragement of learning, by securing the copies of Maps,
“ Charts, and Books, to the Authors and Proprietors of such copies, during the times
“ therein mentioned, and extending the benefits thereof, to the arts of Designing,
“ Engraving and Etching, historical and other prints.”

JOHN H. HANNA,
Clerk of the District of Kentucky.

INTRODUCTION.

THE Compiler of this work respectfully submits to the consideration of the public, the plan and method which he has adopted and pursued.

The work is comprized in three volumes; the first commencing with the government of Kentucky, and embracing all the acts up to the November session of 1797, inclusive, together with the Charter of Virginia—Proclamation of 1763—Act of Cession to the United States of the Territory North West of the Ohio—The Federal Constitution—The Compact with Virginia—and both the Constitutions of Kentucky.

The second volume commences with the January session of 1798, and terminates with the session of 1801. In an appendix to this volume, such acts of Virginia and acts of Parliament as remain in force in this state, and were not necessarily connected with any general head contained in the work, are inserted.

The last volume commences with the year 1802, and closes with the session of 1808.

It must have occurred to every reader of the Session Acts, that they have been printed and numbered without any regard to the priority in which they passed; so that an act passed on the last day of the session is as likely to occupy the first as any other page of the annual pamphlet. This circumstance, trivial as it is, has had some effect in embarrassing enquiry and bewildering the understanding.

In this edition the public acts of every session are arranged in chronological order, except in a very few instances where prudence dictated a departure from this rule, and in which it would have been mere pedantry to pursue it.

At the commencement of each chapter containing any matter of general law which is connected with a prior or future act of assembly, the compiler has prefixed a prælection, the substance of which is as follows:

First—Prospective references to every future act on the same subject, informing the reader when each of them pas-

sed, the chapter and volume of this work in which they may be found, and in most instances a brief abstract of their contents.

Secondly—Each prælection contains such acts and parts of acts of the assembly of Virginia and parliament of England, remaining in force, as are requisite, together with the preceding part of the prælection, fully to apprize the reader of all the statutory provisions on the subject. In many instances an act of assembly has been merely transcribed from an act of Virginia, but dated as of the session in which it passed in Kentucky; in such cases it is obvious that the enactment by Kentucky produced no change whatever in the law, yet the reader has been left utterly in the dark as to what the law was before. This has been remedied by such references to the Virginia acts as gives the real date of the law.

Thirdly—Our legislature have in several instances acted under an impression that laws of Virginia which were in fact repealed, remained in force, and have predicated their acts on this mistaken idea. Wherever this is the case, it is impossible to understand the act of Kentucky, without taking into view the particular act which the legislature meant to connect it with. In such cases some sections of the repealed laws of Virginia have been inserted in the prælections, in order to relieve the embarrassment of the reader.

To avoid a repetition of these prælections, they have generally been introduced on the earliest occurrence of the subject matter to which they apply; and on a recurrence of the same matter reference is made to the first chapter on the subject.

The compiler having introduced into this collection the great body of the LOCAL LAWS of this state, it may be expected that he should give some reason for so doing—He assigns the following:

First—From the immensity of property which has by acts of this description been placed, to some extent or purpose, out of the operation of our general system of law, they must now unfortunately be considered at least as *quasi* public law; and no attorney or judge can discharge the ordinary duties of his profession or office without a frequent recurrence to them.

It is a melancholy reflection, that in the short period of sixteen years, nearly one fourth in value of the real property in the state, is placed under some regulation or other different from the general law of the land. By this means that similarity and equality of right, which it was once fondly expected would result from republican institutions, is going to destruction with unparalleled rapidity—perhaps the period

may be within calculation, when every man of influence will have some particular law in favor of himself, his wife, his family, or his farm. If such a state of things is not in itself aristocracy or anarchy, it must inevitably and quickly produce the one or the other.

Secondly—On local acts of assembly suits are frequently brought, appeals taken, and constitutional questions or legal questions of unlimited influence decided. Few indeed are the cases which have been decided in the court of appeals, in which principles of more widely extended application have been established, than in the following: *Clarke and alius vs Patrick and wife—Stidgers vs Rogers, and Caldwell vs the commonwealth*. Yet the acts of assembly on which the actions arose could not be considered as general acts or public laws, and these decisions cannot be understood without a view of the respective acts.

As to the acts which are, strictly speaking PERSONAL, such as those authorising divorces, relieving sheriffs and other persons public or private, he had once intended to pass them over in silence, or merely to give their titles; but it was suggested that retaining the substance, might give the reader a view of the extent to which legislative power had been exercised in this state, and would be an occasional relief from the tiresome verbosity of legislative language; he has therefore introduced a short abridgment of every personal act ever passed in Kentucky.

As he is the first compiler who ever introduced laws expressly repealed, it may be expected that he should give a very particular account of his motives for so doing—They are as follows:

First—When a law is enacted and comes into operation, it instantly attaches itself to matters then existing and *in fieri*, and according to the principles of our constitution, will adhere to them until they are finally disposed of: hence an act of assembly may stand repealed in the statute book, and yet be in force in every court in the state; the Virginia land law furnishes an eminent example of this—the substance of it has been repealed to nearly every purpose, except adjudicating on the transactions which took place under it, ever since the existence of our government; yet there is no law more interesting or more litigated.

Secondly—It is a well established maxim of our law, that in construing any act of assembly all other acts on the same subject, *whether repealed or not*, are to be taken into considera-

tion. Under the extensive operation of this principle, no law of Virginia or Kentucky has ever yet been repealed ; for though not in force as directly obligatory, they are all in force for the purpose of giving direction and decision to those which are obligatory.

Thirdly—There are many acts which it would be rash and presumptuous to exclude, under the idea of their being repealed, until we have been taught by judicial decision, what effects are to result from a rule of construction introduced into our code by an act of 1789, and afterwards copied by the legislature of Kentucky. The rule is as follows : *Whensoever one law which shall have repealed another shall be itself repealed, the former law shall not be revived without express words to that effect*—Acts of 1789, chap. 9, sec. 2. We are yet to learn from judicial construction, whether under this rule, after an act of assembly which has produced a radical change in the law has been repealed, the law will be the same as if such act had never passed, or the same as if it had never been repealed.

For example—there is a maxim of common law, that an action of covenant shall not be maintained on a writing not under seal ; in 1796 an act was passed which says, *actions of covenant may be brought on writings not under seal* ; this necessarily repealed that common law maxim. In 1798 the legislature expressly repealed the act of 1796, but were silent as to what the law should thereafter be. Suppose a question is made whether an action of covenant may *now* be maintained on a writing not under seal ? If it is said that it cannot—what is the effect of the act of 1789 ? If it is said that it can—what is the effect of the repealing act of 1798.

Perhaps it may be suggested that by the term *law* in the act of 1789, the legislature intended acts of assembly *only* ; but they certainly use the generic term, and in the same section, in the same sentence they give us to understand that they knew the precise meaning both of the word *law* and *act*. It is not however intended to argue this point here, nor would the compiler be understood as giving any opinion on it ; he has merely suggested it as an apology for his republication of repealed laws.

Fourthly—From a want of congruity between the title and subject matter of an act, a particular law may be repealed by name, and none, except the most indefatigable student, be apprized of the quantity or quality of the law repealed—This renders it necessary to have a view of the repealed act.

INTRODUCTION.

Fifthly—The habits, and manners, and modes of thinking and feeling acquired by the people under existing laws, will necessarily continue long after the laws themselves have been repealed; they become then the *lex non scripta* of the human heart, and are frequently above legislative control, and have themselves an incalculable influence on every system of jurisprudence. The compiler must content himself with barely hinting at this subject here—a subject perhaps of all the most interesting and amusing to the philosophical lawyer.

The plan of the INDEX which he has annexed to each volume, is as follows:

First—An alphabetical index of all the public and general laws of Kentucky remaining in force and contained in that particular volume, with a reference not only to the page in which they may be found, but to the session in which they were passed.

This index, in matters of a practical nature, is intended not merely for the purpose of reference, but to contain the real substance of the law, to exhibit its progressive mutations, the time when an existing principle was lopped off, a new one engrafted, &c.

Secondly—An alphabetical index, separate from the other, to all the acts of Virginia and of England which have been introduced into the work or the prælections. This, for obvious reasons, is more concise than the former.

Thirdly—Distinct from both these, an alphabetical index to all the local matter, and a table of personal acts.

Lastly—The first volume concludes with an alphabetical table of references to every decision which has ever taken place in the court of appeals, from its first establishment until the close of the October term 1808, in which any principle of law, equity or practice has been recognized or established. The same plan will be pursued in the second and third volumes, as new decisions shall occur and become accessible to the compiler.

To conclude—The main object of the compiler, has been to render this work so complete, that the reader would not be under the necessity of looking elsewhere for any statute law in force in this state. This primary object has never been abandoned in quest of brevity or method—he has however endeavoured to be systematic as far as was consistent with his principle aim, and where he has failed it is to be hoped that some indulgence will be granted, in consideration of the materials he had to work on—and that the copiousness of the general

index, will stand in the place of an apology for chronological arrangement.

In the plan and the execution of this work, he has neither sought nor received the advice or the aid of any man living, so that all its defects are imputable to him alone. If it should be asked, where was the necessity of publishing a new edition of the laws at all? He thinks it a sufficient answer to say, that no compilation or collection yet published, has been satisfactory to the lawyer, the judge or the citizen; and if this also should be found unsatisfactory, his regret will be alleviated by reflecting that it must be imputed to some other cause than want of industry in him.

WILLIAM LITTELL.

After the printing of this work was finished, I read it over, for the purpose of detecting any errors which might have eluded observation during the previous examinations, and have discovered the following. — In the first section of the fourth article of the Federal Constitution, page 11, line 3, [of the section] the word *penal* is inserted instead of the word *general*. — In the eleventh section of the tenth article of the New Constitution, page 55, the word *or*, ought to be inserted immediately preceding the words “by leave of the court,” in the fourth line of that article. — The printers were led into the first of these errors by printing after a collection of Constitutions lately published in Philadelphia; the second is an error in all the printed copies, and has been corrected by the roll.

A reference at the foot of the preface to chapter 23, page 90, was printed by mistake: it was my intention to have it omitted altogether; however as it has been printed, the reader may make it refer to chapters 256 & 265 in place of 258 & 260: if he reads it that way he will receive no injury from it. In page 232 will be found the note of an obsolete law which ought to bear date 1794, instead of 1792: and in page 247 a local act is dated 1793, instead of 1794. In the last line of page 380, an “*of*” is substituted in the place of “*or*,” and in the second section on page 381 *forendon* is printed in the room of *formendon*: in page 389, in the first line of an act of 1772, *attention* is printed in the place of *inattention*.

If there are any typographical errors not here pointed out, they are such as cannot possibly mislead, and therefore have not been noticed.

It is a duty which I owe both to the printers and myself to inform the reader, that the deviations from grammar rules, and indeed from plain sense, which may sometimes be found in the acts of assembly, are not imputable to us, or to either of us; they exist in the enrolled bills: in some glaring instances I have corrected it in the text, and placed the reading of the rolls in the margin, in other cases I have left it to the reader either to correct it or take it as it is, whichever he pleases. I shall conclude with assuring the learned reader, that I understand the *spelling* at least of the Latin language moderately well, and have no design to introduce an innovation into the Roman orthography. I always adhere to the ordinary spelling except when compelled by *foreign power* to deviate therefrom,

W. LITTELL.

Several Acts of Parliament, and other interesting State Papers for want of room in this, are referred to the second volume.

CHARTER OF VIRGINIA OF 1609.

JAMES, by the grace of God, king of England, Scotland, France and Ireland, defender of the faith, &c. to all to whom these presents shall come, greeting : Whereas, at the humble suit and request of sundry our loving and well disposed subjects, intending to deduce a colony, and to make habitation and plantation of sundry our people, in that part of America, commonly called Virginia, and other parts and territories in America, either appertaining unto us, or which are not actually possessed of any Christian prince or people, within certain bounds and regions, we have formerly, by our letters patents, bearing date the tenth day of April, in the fourth year of our reign of England, France, and Ireland, and of Scotland the nine and thirtieth, granted to Sir Thomas Gates, Sir George Somers, and others, for the more speedy accomplishment of the said plantation and habitation, that they should divide themselves into two colonies (the one consisting of divers knights, gentlemen, merchants, and others, of our city of London, called the first colony ; and the other consisting of divers knights, gentlemen, and others, of our cities of Bristol, Exeter, and town of Plimouth, and other places, called the second colony.) And have yielded and granted many and sundry privileges and liberties to each colony, for their quiet settling and good government therein, as by the said letters patents more at large appeareth.

Now, forasmuch as divers and sundry of our loving subjects, as well adventurers as planters, of the said first colony, which have already engaged themselves in furthering the business of the said colony and plantation, and do further intend, by the assistance of Almighty God, to prosecute the same to a happy end, have of late been humble suitors unto us, that (in respect of their great charges and the adventure of many of their lives, which they have hazarded in the said discovery and plantation of the said country) we would be pleased to grant them a further enlargement and explanation of the said grant, privileges, and liberties, and that such counsellors, and other officers, may be appointed amongst them, to manage and direct their affairs, as are willing and ready to adventure with them, as also whose dwellings are not so far remote from the city of London, but they may, at convenient times, be ready at hand, to give their advice and assistance, upon all occasions requisite.

We greatly affecting the effectual prosecution and happy success of the said plantation, and commending their good desires therein, for their further encouragement in accomplishing so excellent a work, much pleasing to God, and profitable to our kingdom, do of our especial grace, and certain knowledge, and mere motion, for us, our heirs and successors, give, grant, and confirm to our trusty and well beloved subjects, Robert, Earl of Salisbury, Thomas, Earl of Suffolk, &c. &c. [*A multitude of other names follow*] and to such and so many as they do or shall hereafter admit to be join-

ed with them, in the form hereafter in these presents expressed, whether they go in their persons to be planters there in the said plantation, or whether they go not, but adventure their monies, goods, or chattels, that they shall be one body or commonalty perpetual, and shall have perpetual succession and one common seal to serve for the said body or commonalty, and that they and their successors shall be known, called, and incorporated by the name of "the treasurer and company of adventurers and planters of the city of London, for the first colony in Virginia." And that they and their successors shall be from henceforth forever enabled to take, acquire, and purchase by the name aforesaid (License for the same from us, our heirs and successors, first had and obtained) any manner of lands, tenements and hereditaments, goods and chattels, within our realm of England, and dominion of Wales. And that they and their successors shall likewise be enabled by the name aforesaid, to plead and be impleaded, before any of our judges or justices in any of our courts, and in any actions or suits whatsoever. And we do also of our special grace, certain knowledge, and mere motion, give, grant and confirm unto the said treasurer and company and their successors, under the reservations, limitations, and declarations hereafter expressed, all those lands, countries and territories, situate, lying, and being in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the sea coast to the northward, two hundred miles, and from the said point of Cape Comfort, all along the sea coast to the southward, two hundred miles, and all that space and circuit of land, lying from the sea coast of the precinct aforesaid, up into the land throughout from sea to sea, west and northwest; and also all the islands lying within one hundred miles along the coast of both seas of the precinct aforesaid; together with all the soils, grounds, havens, and ports, mines, as well royal mines of gold and silver, as other minerals, pearls and precious stones, quarries, woods, rivers, waters, fishings, commodities, jurisdictions, royalties, privileges, franchises and preeminences within the said territories and the precincts thereof, whatsoever, and thereto and thereabouts both by sea and land, being, or in any sort belonging or appertaining, and which we, by our letters patents, may or can grant, in as ample manner and sort as we, or any our noble progenitors, have heretofore granted to any company, body politic or corporate, or to any adventurer or adventurers, undertaker or undertakers of any discoveries, plantations or traffic, of, in, or into any foreign parts whatsoever, and in as large and ample manner as if the same were herein particularly mentioned and expressed; To have and to hold, possess and enjoy, all and singular the said lands, countries and territories, with all and singular other the premises heretofore by these presents granted, or mentioned to be granted to them, the said treasurer and company, their successors and assigns forever; to the sole and proper use of them, the said treasurer and company, their successors and assigns forever; to be holden of us, our heirs and successors, as of our manor of East Greenwich, in free and common socage, and not in capite; yielding and paying therefor, to us, our heirs and successors, the fifth part only of all ore of gold and silver, that from time to time, and at all times hereafter, shall be there gotten, had, or obtained for all manner of services. And nevertheless our will and pleasure is, and we do by these presents charge and command, warrant and authorize, that the said treasurer and company, or their successors, or the major part of them which shall be present and assembled for that purpose, shall from time to time, under their common seal, distribute, convey, assign, and set over such particular portions of lands, tenements, and hereditaments, by these presents formerly granted unto such our loving subjects, naturally born, or denizens, or others, as well adventurers as planters, as by the said company (upon a commission of survey and distribution, executed and returned for that purpose) shall be nominated, appointed, and allowed; wherein our will and pleasure is, that respect be had as well of the proportion of the adventurer, as to the special service, hazard, exploit or merit of any person so to be recompensed, advanced or rewarded. And forasmuch as the good and prosperous success of the said plantation cannot but chiefly depend next under the blessing of God, and the support of our royal authority, upon the provident and good direction of the whole enterprise, by a careful and understanding council, and that it is not convenient that all the adventurers shall be so often drawn to meet and assemble, as shall be requisite for them to have meetings and conference about the affairs thereof; therefore we do ordain, esta-

CHARTER OF VIRGINIA.

ix

do hereby confirm, that there shall be perpetually one council here resident, according to the tenour of our former letters patents; which council shall have a seal for the better government and administration of the said plantation, besides the great seal of the company or corporation, as in our former letters patents is also expressed. And further, we establish and ordain, That Henry earl of Southampton, William earl of Pembroke, Henry earl of Lincoln, Thomas earl of Exeter, Robert lord viscount Lisle, lord Theophilus Howard, James lord bishop of Bath and Wells, lord Edward Zouche, Thomas lord Lawarr, William lord Mounteagle, Edmund lord Sheffield, Gray lord Chandois, John lord Stanhope, George lord Carew, sir Humfrey Weld, lord mayor of London, sir Edward Cecil, sir William Wade, sir Henry Nevil, sir Thomas Smith, sir Oliver Cromwell, sir Peter Manwood, sir Thomas Challoner, sir Henry Hobert, sir Francis Bacon, sir George Coppin, sir John Scot, sir Henry Carey, sir Robert Drury, sir Horatio Vere, sir Edward Conway, sir Maurice Berkeley, sir Thomas Gates, sir Michael Sandys, sir Robert Mansell, sir John Trevor, sir Amias Preston, sir William Godolphin, sir Walter Cope, sir Robert Killigrew, sir Henry Fanshaw, sir Edwin Sandys, sir John Watts, sir Henry Montague, sir William Romney, sir Thomas Roe, sir Baptist Hicks, sir Richard Williamson, sir Stephen Poole, sir Dudley Digges, Christopher Brooke, Esq. John Eldred and John Wolstenholme shall be our council for the said company of adventurers and planters in Virginia: and the said Thomas Smith we do ordain to be treasurer of the said company; which treasurer shall have authority to give order for the warning of the council and summoning the company to their courts and meetings. And the said council and treasurer, or any of them, shall be from henceforth nominated, chosen, continued, displaced, changed, altered and supplied, as death or other several occasions shall require; out of the company of the said adventurers, by the voice of the greater part of the said company and adventurers, in their assembly for that purpose: Provided always, that every counsellor so newly elected, shall be presented to the lord chancellor of England, or to the lord high treasurer of England, or to the lord chamberlain of the household of us, our heirs and successors for the time being, to take his oath of a counsellor to us, our heirs and successors, for the said company of adventurers and colony in Virginia. And we do by these presents, of our special grace, certain knowledge, and mere motion, for us, our heirs and successors, grant unto the said treasurer and company, and their successors, that if it happen at any time or times the treasurer for the time being to be sick, or to have any such cause of absence from the city of London, as shall be allowed by the said council, or the greater part of them assembled, so as he cannot attend the affairs of that company, in every such case it shall and may be lawful for such treasurer for the time being to assign, constitute and appoint one of the council or company, to be likewise allowed by the council or the greater part of them assembled, to be the deputy treasurer of the said company; which deputy shall have power to do and execute all things which belong to the said treasurer, during such time as such treasurer shall be either sick, or otherwise absent, upon cause allowed of by the said council, or the major part of them, as aforesaid, so fully and wholly and in as large and ample manner and form to all intents and purposes as the said treasurer if he were present himself might or could do and execute the same.

And further, of our special grace, certain knowledge, and mere motion, for us, our heirs and successors, we do by these presents, give and grant full power and authority to our said council here resident, as well at this present time as hereafter from time to time, to nominate, make, constitute, ordain and confirm, by such name or names, stile or stiles, as to them shall seem good—and likewise to revoke, discharge, change and alter, as well all & singular governors, officers and ministers, which already have been made, as also which hereafter shall be by them thought fit and needful to be made or used for the government of the said colony and plantation: and also to make, ordain and establish all manner of orders, laws, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government of the said colony and plantation: and the same at all times hereafter, to abrogate, revoke, or change, not only within the precincts of the said colony, but also upon the seas in going and coming to and from the said colony, as they in their good discretion, shall think to be fittest for the good of the adventurers and in-

CHARTER OF VIRGINIA.

habitants there. And we do also declare, that for divers reasons and considerations, us thereunto especially moving, our will and pleasure is, and we do hereby ordain, that immediately from and after such time as any such governor or principal officer, so to be nominated and appointed by our said council, for the government of the said colony as aforesaid, shall arrive in Virginia, and give notice unto the colony there resident, of our pleasure in this behalf, the government, power and authority of the president and council heretofore by our former letters-patents there established, and all laws and constitutions by them formerly made shall utterly cease and be determined; and all officers, governors and ministers formerly constituted and appointed, shall be discharged, any thing in our former letters-patents concerning the said plantation contained in anywise to the contrary notwithstanding—straitly charging and commanding the president and council now resident in the said colony upon their allegiance, after knowledge given unto them of our will and pleasure by these presents signified and declared that they forthwith be obedient to such governor or governors as by our said council here resident shall be named and appointed as aforesaid, and to all directions, orders and commandments which they shall receive from them, as well in the present resigning and giving up of their authority, offices, charge and places, as in all other attendance as shall be by them from time to time required. And we do further by these presents ordain and establish, that the said treasurer and council here resident, and their successors or any four of them being assembled (the treasurer being one) shall from time to time have full power and authority to admit and receive any other person into their company, corporation and freedom; and further in a general assembly of adventurers, with the consent of the greater part upon good cause, to disfranchise and put out any person or persons out of the said freedom or company. And we do also grant and confirm for us, our heirs and successors, that it shall be lawful for the said treasurer and company and their successors by direction of the governors there, to dig and to search for all manner of mines of gold, silver, copper, iron, lead, tin, and all sorts of minerals, as well within the precinct aforesaid, as within any part of the main land not formerly granted to any other; and to have and enjoy the gold, silver, copper, iron, lead and tin, and all other minerals to be gotten thereby, to the use and behoof of the said company of planters and adventurers—yielding thereof and paying unto us, our heirs and successors as aforesaid. And we do further of our special grace, certain knowledge and mere motion for us, our heirs and successors, grant by these presents, to and with the said treasurer and company, and their successors, that it shall be lawful and free for them and their assigns, at all and every time and times hereafter, out of our realm of England, and out of all other our dominions, to take and lead into the said voyages, and for and towards the said plantation, and to travel thitherwards and to abide and inhabit there in the said colony and plantation, all such and so many of our loving subjects, or any other strangers that will become our loving subjects and live under our obedience; as shall willingly accompany them in the said voyage and plantation; with sufficient shipping, armour, weapons, ordinance, munition, powder, shot, victuals, and such merchandises or wares as are esteemed by the wild people in those parts, cloathing, implements, furniture, cattle, horses and mares, and all other things necessary for the said plantation, and for their use and defence and trade with the people there; and passing and returning to and fro, without yielding or paying subsidy, custom, imposition, or any other tax or duty to us, our heirs or successors, for the space of seven years from the date of these presents: Provided that none of the said persons be such as shall be hereafter by special name restrained by us, our heirs and successors. And for their further encouragement, of our special grace and favor, we do by these presents, for us, our heirs and successors, yield and grant to and with the said treasurer and company, and their successors, and every of them, their factors and assigns, that they and every of them shall be free of all subsidies and customs in Virginia, for the space of one and twenty years, and from all taxes and impositions forever upon any goods or merchandises at any time or times hereafter, either upon importation thither or exportation from thence into our realm of England, or into any other of our realms or dominions, by the said treasurer and company, and their successors, and their deputies, factors or assigns, or any of them: except only the five pounds per cent, due for custom upon all such goods and merchandises as shall be

brought or imported into our realm of England, or any other of these our dominions according to the ancient trade of merchants: which five pounds per cent, only being paid, it shall be thenceforth lawful and free for the said adventurers, the same goods and merchandises to export and carry out of our said dominions into foreign parts without any custom, tax, or other duty to be paid to us, our heirs, or successors, or to any other our officers or deputies: Provided that the said goods and merchandises be shipped out within thirteen months after their first landing within any part of those dominions. And we do also grant and confirm to the said treasurer and company, and their successors, as also to all and every such governor or other officers and ministers as by our said council shall be appointed to have power and authority of government, and command in and over the said colony and plantation; that they and every of them, shall and lawfully may from time to time and at all times forever hereafter, for their several defence and safety, encounter, expulse, repel and resist by force and arms, as well by sea as by land, and all ways and means whatsoever, all and every such person and persons whatsoever as (without the special licence of the said treasurer and company and their successors) shall attempt to inhabit within the said several precincts and limits of the said colony and plantation—And also all and every such person and persons whatsoever, as shall enterprize or attempt at any time hereafter, destruction, invasion, hurt, detriment or annoyance to the said colony and plantation, as is likewise specified in the said former grant: and that it shall be lawful for the said treasurer and company and their successors, and every of them, from time to time, and at all times forever hereafter, and they shall have full power and authority to take and surpriſe by all ways and means whatsoever, all and every person and persons whatsoever, with their ships, goods, and other furniture, trafficking in any harbour, creek or place, within the limits or precincts of the said colony and plantation not being allowed by the said company to be adventurers or planters of the said colony until such time as they being of any realms and dominions under our obedience, shall pay or agree to pay to the hands of the treasurer, or of some other officer deputed by the said governor of Virginia (over and above such subsidy or custom as the said company is or hereafter shall be to pay) five pounds per cent. upon all goods and merchandises so brought in thither, and also five per cent. upon all goods by them shipped out from thence; and being strangers and not under our obedience, until they have paid (over and above such subsidy and custom, as the said treasurer and company or their successors is, or hereafter shall be to pay) ten pounds per cent. upon all such goods likewise carried in and out, any thing in the said former letters-patents to the contrary notwithstanding; and the same sums of money and benefit aforesaid, for and during the space of one and twenty years, shall be wholly employed to the benefit, use and behoof of the said colony and plantation; and after the said one and twenty years ended, the same shall be taken to the use of us, our heirs and successors, by such officers and ministers, as by us, our heirs or successors shall be thereunto assigned and appointed, as is specified in the said former letters patents. Also we do for us, our heirs and successors, declare by these presents, that all and every the persons being our subjects, which shall go and inhabit within the said colony and plantation, and every their children and posterity, which shall happen to be born within any of the limits thereof, shall have and enjoy all liberties, franchises and immunities of free denizens and natural subjects within any of our other dominions to all intents and purposes, as if they had been abiding and born within this our realm of England, or in other of our dominions. And for as much as it shall be necessary for all such our loving subjects as shall inhabit within the said precincts of Virginia aforesaid, to determine to live together in the fear and true worship of Almighty God, christian peace and civil quietness each with other, whereby every one may with more safety, pleasure and profit enjoy that whereunto they shall attain with great pain and peril—we for us, our heirs and successors are likewise pleased and contented, and by these presents do give and grant unto the said treasurer and company and their successors, and to such governors, officers and ministers, as shall be by our said council constituted and appointed according to the natures and limits of their offices and places respectively, that they shall and may from time to time, forever hereafter, within the said precincts of Virginia, or in the way by sea thither and from thence, have full and absolute power and authority to

correct, punish, pardon, govern and rule all such the subjects of us, our heirs and successors, as shall from time to time adventure themselves in any voyage thither, or that shall at any time hereafter inhabit in the precincts and territories of the said colony as aforesaid, according to such orders, ordinances, constitutions, directions and instructions, as by our said council as aforesaid, shall be established; and in defect thereof in case of necessity, according to the good discretion of the said governor and officers respectively, as well in cases capital and criminal, as civil, both marine and other; so always as the said statutes, ordinances and proceedings as near as conveniently may be, be agreeable to the laws statutes, government, and policy of this our realm of England. And we do further of our special grace, certain knowledge and mere motion, grant, declare, and ordain, that such principal governor, as from time to time shall duly and lawfully be authorised and appointed in manner and form in these presents heretofore expressed, shall have full power and authority, to use and exercise martial law in cases of rebellion or mutiny, in as large and ample manner as our lieutenants in our counties within this our realm of England have, or ought to have, by force of their commissions of lieutenancy. And furthermore, if any person or persons, adventurers or planters of the said colony, or any other at any time or times hereafter, shall transport any monies, goods or merchandises, out of any of our Kingdoms with a pretence or purpose to land, sell or otherwise dispose of the same within the limits or bounds of the said colony, & yet nevertheless being at sea, or after he hath landed within any part of the said colony, shall carry the same into any other foreign country with a purpose there to sell and dispose thereof; that then all the goods and chattels of the said person or persons so offending and transported, together with the ship or vessel wherein such transportation was made, shall be forfeited to us, our heirs and successors. And further, our will and pleasure is, that in all questions and doubts that shall arise upon any difficulty of construction or interpretation of any thing contained either in this or in our said former letters-patents, the same shall be taken and interpreted in most ample and beneficial manner for the said treasurer and company, and their successors and every member thereof. And further, we do by these presents ratify and confirm unto the said treasurer and company, and their successors, all the privileges, franchises, liberties and immunities granted in our said former letters-patents, and not in these our letters-patents, revoked, altered, changed or abridged. And finally our will and pleasure is, and we do further hereby for us, our heirs and successors, grant and agree, to and with the said treasurer and company and their successors, that all and singular person and persons, which shall at any time or times hereafter adventure any sum or sums of money, in and towards the said plantation of the said colony in Virginia, and shall be admitted by the said council and company, as adventurers of the said colony in form aforesaid, and shall be enrolled in the book or records of the adventurers of the said company, shall and may be accounted, accepted, taken, held and reputed adventurers of the said colony, and shall and may enjoy all and singular grants, privileges, liberties, benefits, profits, commodities and immunities, advantages and emoluments whatsoever, as fully, largely, amply and absolutely, as if they and every of them had been precisely, plainly, singularly, and distinctly named and inserted in these our letters-patents. And lastly, because the principal effect which we can desire or expect of this action, is the conversion and reduction of the people in those parts unto the true worship of God and Christian religion, in which respect we should be loath that any person should be permitted to pass that we suspected to affect the superstitions of the church of Rome, we do hereby declare, that it is our will and pleasure that none be permitted to pass in any voyage from time to time to be made into the said country, but such as first shall have taken the oath of supremacy; for which purpose, we do by these presents give full power and authority to the treasurer for the time being, and any three of the council, to tender and exhibit the said oath, to all such persons as shall at any time be sent and employed in the said voyage.—Although express mention of true yearly value or certainty of the premises, or any of them, or of any other gifts or grants by us, or any of our progenitors or predecessors to the aforesaid treasurer and company heretofore made in these presents, is not made—or any act, statute, ordinance, provision, proclamation, or restraint, to the contrary hereof had, made, ordained or provided, or any other thing, cause, or matter whatso-

PROCLAMATION OF 1763.

xiii

over, in any wise notwithstanding. In witness whereof, we have caused these our letters to be made patent. Witness ourself at Westminster, the 23d day of May, in the seventh year of our reign of England, France, and Ireland, and of Scotland ****

PER IPSUM REGEM.

LUKIN.

This Charter was a few years afterwards annulled by quo warranto, and several special Commissions, Proclamations, &c. issued, in all of which the King declared, in substance, that the Charter was abrogated for the benefit of the Settlers, that it should not affect their private or civil rights, but only the political rights of the company at home.

AS MUCH OF THE KING'S PROCLAMATION OF 1763, AS RELATES TO THE TITLES TO LAND IN KENTUCKY.

"WHEREAS we are desirous, upon all occasions, to testify our royal sense and approbation of the conduct and bravery of the officers and soldiers of our armies, and to reward the same, we do hereby command and empower our governors of the said three new colonies, and all other our governors of our said provinces on the continent of North America, to grant without fee or reward, to such reduced officers as have served in North America during the late war, and to such private soldiers as have been, or shall be disbanded in America, and are actually residing there, and shall personally apply for the same, the following quantities of lands, subject at the expiration of ten years, to the same quitrents as other lands are subject to in the province within which they are granted, as also subject to the same conditions of cultivation and improvement, viz.

"To every person having the rank of a field officer, five thousand acres; to every captain, three thousand acres; to every subaltern or staff-officer, two thousand acres; to every non-commissioned officer, two hundred acres; to every private man, fifty acres.

"We do likewise authorize and require the governors and commanders in chief of all our said colonies upon the continent of North America, to grant the like quantities of land, and upon the same conditions, to such reduced officers of our navy, of like rank as served on board our ships of war in North America at the times of the reduction of Louisbourg and Quebec in the late war, and who shall personally apply to our respective governors for such grants."

The Act of Cession to the United States of the Territory northwest of Ohio, from its connection with the Land Law, is incorporated therewith, see page 444.

CONSTITUTION
OF THE
UNITED STATES.

The CONSTITUTION framed for the United States of America, by a Convention of Deputies from the States of New-Hampshire, Massachusetts, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, at a session begun May 25, and ended September 17, 1787.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION I.

All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

I. The House of Representatives shall consist of members chosen every second year, by the people of the several states: and the electors in each state, shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

II. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

III. Representatives and direct taxes, shall be apportioned among the several states, which may be included within this union, according to their respective numbers,

which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States; and within every subsequent term of years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand: but each state shall have at least one representative: and, until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three; Massachusetts eight; Rhode-Island and Providence plantations one; Connecticut five; New-York six; New-Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North-Carolina five; South-Carolina five; and Georgia three.

IV. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

V. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECTION III.

I. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years: and each senator shall have one vote.

II. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year: so that one third may be chosen every second year. And if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

III. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

IV. The Vice-President of the United States shall be President of the Senate; but shall have no vote unless they be equally divided.

V. The senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

VI. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted, without the concurrence of two-thirds of the members present.

VII. Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

SECTION IV.

I. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

II. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

I. Each House shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

II. Each House may determine the rules of its proceedings; punish its members for disorderly behaviour; and with the concurrence of two-thirds, expel a member.

III. Each House shall keep a journal of its proceedings; and, from time to time, publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays, of the members of either House, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

CONSTITUTION OF THE

IV. Neither House during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION VI.

I. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of their respective Houses and in going to, and returning from the same; for any speech or debate in either House, they shall not be questioned in any other place.

II. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments of which shall have been increased, during such time: and no person, holding any office under the United States shall be a member of either House, during his continuance in office.

SECTION VII.

I. All bills for raising revenue, shall originate in the House of Representatives; but the Senate shall propose or concur with amendments as on other bills.

II. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be re-considered: and, if approved by two-thirds of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays: and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President, within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their ad-

journalment, prevent its return ; in which case it shall not be a law.

III. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States ; and, before the same shall take effect, be approved by him ; or, being disapproved by him, shall be re-passed by two-thirds of both houses, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The Congress shall have power—

I. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence, and general welfare of the United States : but all duties, imposts, and excises, shall be uniform throughout the United States.

II. To borrow money on the credit of the United States.

III. To regulate commerce with foreign nations, and among the several states, and within the Indian tribes.

IV. To establish an uniform rule of naturalization ; and uniform laws on the subject of bankruptcies, throughout the United States.

V. To coin money ; to regulate the value thereof, and of foreign coin ; and fix the standard of weights and measures.

VI. To provide for the punishment of counterfeiting the securities and current coin of the United States.

VII. To establish post offices and post roads.

VIII. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

IX. To constitute tribunals inferior to the Supreme Court.

X. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

XI. To declare war ; grant letters of marque and reprisal ; and make rules concerning captures on land and water.

XII. To raise and support armies. But no appropriation of money for that use, shall be for a longer term than two years.

XIII. To provide and maintain a navy.

XIV. To make rules for the government and regulation of the land and naval forces.

XV. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions,

CONSTITUTION OF THE

XVI. To provide for organising, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States ; reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

XVII. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States ; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings ; and,

XVIII. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or any department or officer thereof.

SECTION IX.

I. The migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress, prior to the year one thousand eight hundred and eight ; but a tax may be imposed on such importation, not exceeding ten dollars for each person.

II. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

III. No bill of attainder or ex post facto law shall be passed.

IV. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

V. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state, over those of another : nor shall vessels, bound to or from one state, be obliged to enter, clear, or pay duties in another.

VI. No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

VII. No title of nobility shall be granted by the United States : And no person, holding any office of profit or trust

under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION X.

I. No state shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a tender in payment of debts ; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

II. No state shall without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties, and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of Congress. No state shall, without the consent of Congress, lay any duty on tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

I. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows :

II. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives, to which the state may be entitled in the Congress. But no senator or representative, or person holding any office of trust or profit, under the United States, shall be appointed an elector.

III. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate

and House of Representatives open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President: and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states: and a majority of all the states shall be necessary to a choice. In every case after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice-President. But if there should remain two or more, who have equal votes, the Senate shall choose from them, by ballot the Vice-President.

IV. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

V. No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of President. Neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

VI. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President: and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

VII. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished, during the period for which he shall have been elected: and he shall not receive, within that period, any other emolument from the United States, or any of them.

VIII. Before he enter on the execution of his office, he shall take the following oath or affirmation:

UNITED STATES.

9

" I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the constitution of the United States.

SECTION II.

I. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officers in each of the executive departments, upon any subject relating to the duties of their respective office: and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

II. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

III. The President shall have power to fill up all vacancies that may happen, during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECTION III.

He shall, from time to time give to the Congress information of the state of the union; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses or either of them; and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.

The President, Vice-President, and all civil officers of the United States, shall be removed from office, on impeachment

CONSTITUTION OF THE

for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts, as the Congress may, from time to time, ordain and establish. The Judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION II.

I. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, or other public ministers, and consuls, to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or citizens thereof, and foreign states, citizens or subjects.

II. In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

III. The trial of all crimes, except in cases of impeachment, shall be by jury and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places, as the Congress may by law have directed.

SECTION III.

I. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

II. The Congress shall have power to declare the punishment of treason ; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.**SECTION I.**

Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the congress may, by penal laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

I. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

II. A person charged in any state with treason ; felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state, having jurisdiction of the crime.

III. No person, held to service or labour in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labour ; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION III.

I. New states may be admitted by the Congress into this union ; but no new state shall be formed or erected within the jurisdiction of any other state—nor any state be formed by the junction of two or more states—without the consent of the Legislatures of the states concerned as well as of the Congress.

II. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States : and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

SECTION IV.

The United States shall guarantee to every state in this union, a republican form of government ; and shall protect

CONSTITUTION OF THE

each of them against invasion, and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments; which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided, that no amendment, which may be made prior to year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

I. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

II. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges, in every state, shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

III. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the convention of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

UNITED STATES.

13

Done in the convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have subscribed our names.

GEORGE WASHINGTON, *President,*
and *Delegate from Virginia.*

New-Hampshire,

John Langdon,
Nicholas Gilman.

Massachusetts,

Nathaniel Gorham,
Rufus King.

Connecticut,

William Samuel Johnson,
Roger Sherman.

New-York,

Alexander Hamilton,

New-Jersey,

William Livingston,
David Brearley,

William Patterson,

Jonathan Dayton.

Pennsylvania,

Benjamin Franklin,
Thomas Mifflin,

Robert Morris,

George Clymer,

Thomas Fitzsimons,

Jared Ingersoll,

James Wilson,

Gouverneur Morris.

Delaware.

George Reed,
Gunning Bedford, jun.

John Dickinson,

Richard Basset,

Jacob Broom.

Maryland,

James M'Henry,
Daniel of St. Thomas Jenifer,

Daniel Carroll,

Virginia,

John Blair,
James Madison, jun.

North-Carolina,

William Blount,
Richard Dobbs Spaight,

Hugh Williamson.

South-Carolina,

John Rutledge,
Charles C. Pinckney,

Charles Pinckney,

Pierce Butler.

Georgia,

William Few,

Abraham Baldwin.

Attest,

WILLIAM JACKSON, *Secretary.*

AMENDMENTS.

The following ARTICLES in addition to, and amendment of, the Constitution of the United States, having been ratified by the Legislatures of nine States, are equally obligatory with the Constitution itself.

I. CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press ; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

II. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner ; nor in time of war, but in a manner to be prescribed by law.

IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service, in time of war, or public danger : nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case to be witness against himself ; nor be deprived of life, liberty, or property, without due process of law ; nor shall private property be taken for public use, without just compensation.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, of the state and district, wherein the crime shall have been committed ; which district shall have been previously ascertained by law ; and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel for his defence.

VII. In suits at common law, where the value in contro-

AMENDMENTS, &c.

jury shall exceed twenty dollars, the right of trial by jury shall be preserved ; and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

VIII. Excessive bail shall not be required ; nor excessive fines imposed ; nor cruel and unusual punishments inflicted.

IX. The enumeration, in the constitution of certain rights, shall not be construed to deny or disparage others, retained by the people.

X. The powers, not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

XII. The electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least shall not be an inhabitant of the same state with themselves ; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President ; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate ; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted : the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as

President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be Vice-President, if such number be a majority of the whole number of electors appointed ; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President: a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

COMMONWEALTH OF VIRGINIA.

AN ACT concerning the erection of the District of Kentucky into an Independent State.

Passed the 18th of December, 1789.

WHEREAS it is represented to this present General Assembly, that the act of last session, entitled "an act concerning the erection of the District of Kentucky into an independent state," which contains terms materially different from those of the act of October session, one thousand seven hundred and eighty-five, are found incompatible with the real views of this commonwealth, as well as injurious to the good people of the said district:

SEC. 1. *Be it enacted by the general assembly,* That in the month of May next, on the respective court days of the counties within the said district, and at the respective places of holding courts therein, Representatives, to continue in appointment for one year, and to compose a convention, with the powers, and for the purposes hereinafter mentioned, shall be elected by the free male inhabitants of each county, above the age of twenty-one years, in like manner as delegates to the general assembly have been elected within said district, in the proportions following: In the county of Jefferson shall be elected five representatives; in the county of Nelson, five representatives; in the county of Mercer, five representatives; in the county of Lincoln five representatives; in the county of Madison, five representatives; in the county of Fayette, five representatives; in the county of Woodford, five representatives; in the county of Bourbon, five representatives; and in the county of Mason, five representatives: *Provided,* that no free male inhabitant above the age of twenty-one years, shall vote in any other county except that in which he resides, and that no person shall be capable of being elected unless he has been a resident within the said district at least one year.

2. That full opportunity may be given to the good people of exercising their right of suffrage on an occasion so inter-

esting to them, each of the officers holding such elections, shall continue the same from day to day, passing over Sunday, for five days including the first day, and shall cause this act to be read on each day immediately preceding the opening of the election, at the door of the court house, or other convenient place ; each of the said officers shall deliver to each person duly elected a representative, a certificate of his election, and shall transmit a general return to the clerk of the supreme court, to be by him laid before the convention.

3. For every neglect of any of the duties hereby enjoined on such officer he shall forfeit one hundred pounds, to be recovered by action of debt, by any person suing for the same.

4. The said convention shall be held at Danville on the twenty-sixth day of July next; and shall and may proceed, after choosing a president and other proper officers, and settling the proper rules of proceeding, to consider and determine whether it be expedient for, and the will of the good people of the said district that the same be erected into an independent state, on the terms and conditions following :

5. First, that the boundary between the proposed state and Virginia, shall remain the same as at present separates the district from the residue of this commonwealth.

6. Second, that the proposed state shall take upon itself a just proportion of the debt of the United States, and the payment of all the certificates granted on account of the several expeditions carried on from the Kentucky District against the Indians, since the first day of January, one thousand seven hundred and eighty-five.

7. Third, that all private rights and interests of lands within the said District, derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state.

8. Fourth, that the lands within the proposed state of non-resident proprietors, shall not in any case be taxed higher than the lands of residents, at any time prior to the admission of the proposed state to a vote by its delegates in Congress where such non-residents reside out of the United States ; nor at any time, either before or after such admission, where such non-residents reside within this commonwealth within which this stipulation shall be reciprocal ; or where such non-residents reside within any other of the United States, which shall declare the same to be reciprocal within its limits ; nor shall a neglect of cultivation or improvement of any land

within either the proposed state or this commonwealth, belonging to non-residents, citizens of the other, subject such non-residents to forfeiture or other penalty within the term of six years, after the admission of the said state into the Federal Union.

9. Fifth, that no grant of land, or land warrant to be issued by the proposed state, shall interfere with any warrant heretofore issued from the land office of Virginia, which shall be located on land within the said district, now liable thereto, on or before the first day of September one thousand seven hundred and ninety-one.

10. Sixth, that the unlocated lands within the said district, which stand appropriated to individuals or description of individuals, by the laws of this commonwealth, for military or other services, shall be exempted from the disposition of the proposed state, and shall remain subject to be disposed of by the commonwealth of Virginia, according to such appropriation, until the first day of May one thousand seven hundred and ninety two, and no longer: thereafter the residue of all lands remaining within the limits of the said district, shall be subject to the disposition of the proposed state.

11. Seventh, that the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this commonwealth lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this commonwealth and of the proposed state on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river.

12. Eighth, that in case any complaint or dispute, shall at any time arise between the commonwealth of Virginia and the said district, after it shall be an independent state, concerning the meaning or execution of the foregoing articles, the same shall be determined by six commissioners, of whom two shall be chosen by each of the parties, and the remainder by the commissioners so first appointed.

13. Provided however, that five members assembled, shall be a sufficient number to adjourn from day to day, and to issue writs for supplying vacancies which may happen from deaths, resignations or refusals to act; a majority of the whole shall be a sufficient number to chuse a president, settle the proper rules of proceeding, authorise any number to summon a convention during a recess, and to act in all other instances where a greater number is not expressly required.

Two-thirds of the whole shall be a sufficient number to determine on the expediency of forming the said district into an independent state on the aforesaid terms and conditions, provided that a majority of the whole number to be elected concur therein.

14. *And be it further enacted,* That if the said convention shall approve of the erection of the said District into an independent state, on the foregoing terms and conditions, they shall and may proceed to fix a day posterior to the first day of November, one thousand seven hundred and ninety-one, on which the authority of this commonwealth, and of its laws under the exceptions aforesaid, shall cease and determine forever over the proposed state, and the said articles become a solemn compact mutually binding on the parties, and unalterable by either without the consent of the other.

15. *Provided however,* that prior to the first day of November, one thousand seven hundred and ninety-one, the general government of the United States shall assent to the erection of the said district into an independent state, shall release this commonwealth from all its federal obligations arising from the said district as being part thereof, and shall agree that the proposed state shall, immediately after the day to be fixed as aforesaid posterior to the first day of November, one thousand seven hundred and ninety-one, or at some convenient time future thereto, be admitted into the Federal Union.

16. And to the end that no period of anarchy may happen to the good people of the proposed state, it is to be understood, that the said convention shall have authority to take the necessary provisional measures for the election and meeting of a convention, at some time prior to the day fixed for the determination of the authority of this commonwealth, and of its laws over said district, and posterior to the first day of November, one thousand seven hundred and ninety-one aforesaid, with full power and authority to frame and establish a fundamental constitution of government for the proposed state, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority acting under the constitution so to be framed and established.

17. *And be it further enacted,* That the electors in going to, continuing at, and returning from an election of members to the said convention, shall be entitled to the same privileges from arrest, as are by law allowed at an election of members

to the general assembly ; and each person returned to serve as a member in said convention, shall be entitled to the same privileges from arrest in going to, during his attendance on, and returning from said convention, as are by law allowed to the members of the general assembly.

18. This act shall be transmitted by the executive, to the representatives of this commonwealth in congress, who are hereby instructed to use their endeavors to obtain from Congress a speedy act to the effect above specified.

A CONSTITUTION,

OR FORM OF GOVERNMENT, FOR THE STATE OF
KENTUCKY.

WE, the Representatives of the people of the state of Kentucky, in Convention assembled, do ordain and establish this Constitution for its government.

ARTICLE I.

SEC. 1. The powers of government shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit: those which are legislative to one, those which are executive to another, and those which are judiciary to another.

2. No person or collection of persons being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly permitted.

3. The legislative power of this commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

4. The representatives shall be chosen annually, by the qualified electors of each county respectively, on the first Tuesday in May ; but the several elections may be continued for three days, if, in the opinion of the presiding officer or officers, it shall be necessary, and no longer.

5. No person shall be a representative, who shall not

have attained the age of twenty-four years, and have been a citizen and inhabitant of the state two years next preceding his election, and the last six months thereof an inhabitant of the county in which he may be chosen; unless he shall have been absent on the public business of the United States or of this state.

6. Within two years after the first meeting of the General Assembly, and within every subsequent term of four years, an enumeration of the free male inhabitants above twenty-one years of age, shall be made in such manner as may be directed by law. The number of representatives shall at the several periods of making such enumeration be fixed by the legislature, and apportioned among the several counties, according to the number of free male inhabitants above the age of twenty-one years in each, and shall never be less than forty nor greater than one hundred; but no county hereafter erected, shall be entitled to a separate representation, until a sufficient number of free male inhabitants above the age of twenty-one years, shall be contained within it, to entitle them to one representative agreeable to the ratio which shall then be established.

7. The senators shall be chosen for four years.

8. Until the first enumeration be made, the senate shall consist of eleven members, and thereafter for every four members added to the house of representatives, one member shall be added to the senate.

9. In choosing the senate, one member at least shall be elected from each county, until the number of counties is equal to the number of senators: after which, when a new county is made, it shall as to the choice of senators, be considered as being a part of the county or counties from which it shall have been taken.

10. The senate shall be chosen in the following manner: All persons qualified to vote for representatives, shall on the first Tuesday in May, in the present year, and on the same day in every fourth year forever thereafter, at the place appointed by law for choosing representatives, elect by ballot, by a majority of votes, as many persons as they are entitled to have for representatives for their respective counties, to be electors of the senate.

11. No person shall be chosen an elector, who shall not have resided in the state three years next before his election, and who shall not have attained the age of twenty-seven years.

12. The electors of the senate, shall meet at such place as shall be appointed for convening the legislature, on the third Tuesday in May in the present year, and on the same day in every fourth year forever thereafter; and they or a majority of them so met, shall proceed to elect by ballot as senators, men of the most wisdom, experience and virtue, above twenty-seven years of age, who shall have been residents of the state above two whole years next preceding the election. If on the ballot two or more persons shall have an equal number of ballots in their favor, by which the choice shall not be determined by the first ballot, then the electors shall again ballot before they separate, in which they shall be confined to the persons, who on the first ballot shall have an equal number, and they who shall have the greatest number in their favor on a second ballot, shall be accordingly declared and returned duly elected; and if on the second ballot an equal number shall still be in favor of two or more persons, then the election shall be determined by lot, between those who have equal numbers; which proceedings of the electors shall be certified under their hands, and returned to the secretary for the time being, to whom shall also be made by the proper officers returns of the persons chosen as electors in the respective counties.

13. The electors of senators shall judge of the qualifications and elections of members of their own body; and on a contested election, shall admit to a seat as an elector, such qualified person as shall appear to them to have the greatest number of legal votes in his favor.

14. The electors, immediately on their meeting and before they proceed to the election of senators, shall take an oath or make affirmation of fidelity to this state, and also an oath or affirmation to elect without favor, affection, partiality or prejudice, such person for governor, and such persons for senators, as they in their judgment and conscience, believe best qualified for the respective offices.

15. That in case of refusal, death, resignation, disqualification or removal out of this state of any senator, the senate shall immediately thereupon, or at their next meeting thereafter, elect by ballot, in the same manner as the electors are herein directed to chuse senators, another person in his place, for the residue of the said term of four years.

16. The general assembly shall meet on the first Monday in November in every year, till the time of their meeting shall

CONSTITUTION OF THE

be altered by the legislature, unless sooner convened by the governor.

17. Each house shall choose its speaker and other officers, and the senate shall also choose a speaker pro tempore, when their speaker shall exercise the office of governor.

18. Each house shall judge of the qualifications of its members; contested elections shall be determined by a committee to be selected, formed and regulated in such manner as shall be directed by law. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may be authorised by law to compel the attendance of absent members, in such manner and under such penalties as may be provided.

19. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

20. Each house shall keep a journal of its proceedings and publish them weekly, except such parts of them as may require secrecy, and the yeas and nays of the members on any question, shall, at the desire of any two of them, be entered on the journals.

21. The doors of each house and of committees of the whole, shall be open, unless when the business shall be such as ought to be kept secret.

22. Neither house shall, without the consent of the other, adjourn for more than three days; nor to any other place than that in which the two houses shall be sitting.

23. The members of the general assembly, and the electors of the senate, shall receive from the public treasury, a compensation for their services, which for the present shall be six shillings a day during their attendance on, going to and returning from the legislature, and the place for choosing the senators; but the same may be increased or diminished by law, if circumstances shall require it, but no alteration shall be made, to take effect during the existence of the legislature which shall make such alteration. They shall in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the session of the respective houses, and at the place for choosing senators, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

24. No senator or representative shall, during the time for

which he shall have been elected, or for one year afterwards, be appointed to any civil office under this state, which shall have been created or the emoluments of which shall have been increased, during the time such senator or representative was in office: Provided that no member of the first legislature which shall be assembled under this constitution, shall be precluded from being appointed to any office which may have been created during his time of service in the said legislature; and no minister of religious societies, member of congress or other person holding any office of profit under the United States or this commonwealth, except attorneys at law, justices of the peace, militia officers and coroners, shall be a member of either house, during his continuance to act as a minister, in congress, or in office.

25. When vacancies happen in the house of representatives, the speaker shall issue writs of election to fill such vacancies.

26. All bills for raising revenue, shall originate in the house of representatives; but the senate may propose amendments as in other bills.

27. Each senator, representative and sheriff, shall, before he be permitted to act as such, take an oath or make affirmation, that he hath not directly or indirectly, given or promised any bribe or treat to procure his election to the said office; and every person shall be disqualified from serving as a senator, representative or sheriff, for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat, or canvassed for the said office.

28. Every bill which shall have passed both houses, shall be presented to the governor, if he approve he shall sign it, but if he shall not approve, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journals and proceed to re-consider it; if after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be re-considered, and if approved by two-thirds of that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons, voting for or against the bill, shall be entered on the journals of each house respectively; if any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it; unless the general assent

CONSTITUTION OF THE

bly by their adjournment prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

29. Every order, resolution or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him ; or being disapproved, shall be re-passed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

ARTICLE II.

SEC. 1. The supreme executive power of this commonwealth shall be vested in a governor.

2. The governor shall be chosen by the electors of the senate, at the same time, at the same place, and in the same manner that they are herein directed to elect senators, and the said electors shall make return of their proceedings in the choice of a governor, to the secretary for the time being.

3. The governor shall hold his office during four years from the first day of June next ensuing his election.

4. He shall be at least thirty years of age, and have been a citizen and inhabitant of this state at least two years next before his election, unless he shall have been absent on the public business of the United States or of this state.

5. No member of congress or person holding any office under the United States or this state, shall exercise the office of governor.

6. The governor shall at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected.

7. He shall be commander in chief of the army and navy of this commonwealth, and of the militia except when they shall be called into the service of the United States.

8. He shall nominate, and by and with the advice and consent of the senate, appoint all officers, whose offices are established by this constitution, or shall be established by law ; and whose appointments are not herein otherwise provided for : but no person shall be appointed to an office within any county, who shall not have been a citizen and inhabitant therein one year next before his appointment, if the county shall have been so long erected ; but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

9. The governor shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

10. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment; in cases of treason, he shall have power to grant reprieves until the end of the next session of the general assembly, in whom the power of pardoning shall be vested.

11. He may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices.

12. He shall from time to time give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he shall judge expedient.

13. He may on extraordinary occasions convene the general assembly, and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper not exceeding four months.

14. He shall take care that the laws be faithfully executed.

15. In case of the death or resignation of the governor, or of his removal from office, the speaker of the senate shall exercise the office of governor, until another shall be duly qualified.

16. An attorney general shall be appointed and commissioned during good behaviour; he shall appear for the commonwealth in all criminal prosecutions, and in all civil cases, in which the commonwealth shall be interested, in any of the superior courts; shall give his opinion when called upon for that purpose, by either branch of the legislature or by the executive, and shall perform such other duties as shall be enjoined him by law.

17. A secretary shall be appointed and commissioned during the governor's continuance in office, if he shall so long behave himself well: he shall keep a fair register of, and attest all the official acts and proceedings of the governor, and shall when required, lay the same and all papers, minutes and vouchers relative thereto, before either branch of the legislature, and shall perform such other duties as shall be enjoined him by law.

ARTICLE III.

SEC. 1. In elections by the citizens, all free male citizens of the age of twenty-one years, having resided in the state

CONSTITUTION OF THE

two years, or the county in which they offer to vote one year next before the election; shall enjoy the rights of an elector, but no person shall be entitled to vote except in the county in which he shall actually reside at the time of the election.

2. All elections shall be by ballot.

3. Electors shall in all cases except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from them.

ARTICLE IV.

SEC. 1. The house of representatives shall have the sole power of impeaching.

2. All impeachments shall be tried by the senate; when setting for that purpose, the senators shall be upon oath or affirmation: no person shall be convicted without the concurrence of two thirds of the members present.

3. The governor and all other civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust or profit under this commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial and punishment according to law.

ARTICLE V.

SEC. 1. The judicial power of this commonwealth both as to matters of law and equity, shall be vested in one supreme court, which shall be styled the court of appeals, and in such inferior courts as the legislature may from time to time ordain and establish.

2. The judges both of the supreme and inferior courts shall hold their offices during good behaviour; but for any reasonable cause which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two thirds of each branch of the legislature. They shall at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office.

3. The supreme court shall have original and final jurisdiction in all cases respecting the titles to land under the present land laws of Virginia, including those which may be depending in the present supreme court for the district of Kentucky, at the time of establishing of the said supreme

court ; and in all cases concerning contracts for land, prior to the establishing of those titles. And the said court shall have power to hear and determine the same in a summary way, and to direct the mode of bringing the same to a hearing, so as to enable them to do right and justice to the parties, with as little delay and at as small an expence as the nature of the business will allow ; but the said court shall, in all such cases oblige the parties to state the material parts of their complaint and defence in writing ; and shall on the conclusion of every cause, state on the records, the whole merits of the case, the questions arising therefrom, the opinions of the court thereupon, and a summary of the reasons in support of those opinions.

4. And it shall be the duty of each judge of the supreme court, present at the hearing of such cause, and differing from a majority of the court, to deliver his opinion in writing, to be entered as aforesaid ; and each judge shall deliver his opinion in open court. And the said court shall have power on the determination of any such case, to award the legal costs against either party or to divide the same among the different parties, as to them shall seem just and right. And the said court shall have full power to take such steps as they may judge proper, to perpetuate testimony in all cases concerning such titles. Provided that a jury shall always be impannelled for the finding of such facts as are not agreed by the parties ; unless the parties or their attorneys, shall waive their right of trial by jury, and refer the matter of fact to the decision of the court. Provided also, that the legislature may, whenever they may judge it expedient, pass an act or acts to regulate the mode of proceedings in such cases, or to take away entirely the original jurisdiction hereby given to the said court in such cases.

5. In all other cases the supreme court shall have appellate jurisdiction only, with such exceptions and under such regulations as the legislature shall make ; and the legislature may from time to time vest in the supreme and inferior courts, or either of them, such powers both in law and equity, as they shall judge proper and necessary, for the due administration of justice.

6. A competent number of justices of the peace shall be appointed in each county, they shall be commissioned during good behaviour, but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of both houses of the legislature.

7. The judges shall by virtue of their office be conserva-

tors of the peace throughout the state. The style of all process shall be, "*The Commonwealth of Kentucky*:" all prosecutions shall be carried on in the name and by the authority of the commonwealth of Kentucky, and conclude against the peace and dignity of the same.

ARTICLE VI.

1. Sheriffs, and coroners, shall at the times and places of elections of representatives, be chosen by the citizens of each county, qualified to vote for representatives. They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six years. Vacancies in either of the said offices, shall be filled by a new appointment to be made by the governor, to continue until the next general election, and until a successor shall be chosen and qualified as aforesaid.

2. The free men of this commonwealth shall be armed and disciplined for its defence. Those who conscientiously scruple to bear arms, shall not be compelled to do so; but shall pay an equivalent for personal service.

3. The field and staff officers of the militia shall be appointed by the governor, except the battalion staff officers, who shall be appointed by the field officers of each battalion respectively.

4. The officers of companies shall be chosen by the persons enrolled in the list of each company, and the whole shall be commissioned during good behavior, and during their residence in the bounds of the battalion or company to which they shall be appointed.

5. Each court shall appoint its own clerk, who shall hold his office during good behaviour; but no person shall be appointed clerk only pro tempore, who shall not produce to the court appointing him, a certificate from a majority of the judges of the court of appeals, that he hath been examined by their clerk in their presence, and under their direction, and that they judge him to be well qualified to execute the office of clerk to any court of the same dignity with that for which he offers himself. They shall be removable for breach of good behaviour, by the court of appeals only, who shall be judges of the fact as well as of the law: two-thirds of the members present must concur in the sentence.

6. All commissions shall be in the name and by the authority of the state of Kentucky, and be sealed with the state seal, and signed by the governor.

7. The state treasurer shall be appointed annually by the joint ballot of both houses.

ARTICLE VII.

SEC. 1. Members of the general assembly, and all officers executive and judicial before they enter upon the execution of their respective offices, shall take the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will be faithful and true to the commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute to the best of my abilities the office of _____ according to law."

ARTICLE VIII.

SEC. 1. Treason against the commonwealth, shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on his own confession in open court.

2. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery or other high crimes or misdemeanors: the privilege of free suffrage, shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult or other improper practices.

3. No money shall be drawn from the treasury, but in consequence of appropriations made by law, nor shall any appropriations of money for the support of an army, be made for a longer term than one year, and a regular statement and account of the receipts and expenditures of all public money, shall be published annually.

4. The legislature shall direct by law, in what manner and in what courts, suits may be brought against the commonwealth.

5. The manner of administering an oath or affirmation, shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the legislature the most solemn appeal to God.

6. All laws now in force in the state of Virginia, not consistent with this constitution, which are of a general nature, and not local to the eastern part of that state, shall be in force in this state, until they shall be altered or repealed by the legislature.

7. The compact with the state of Virginia, subject to such alterations as may be made therein, agreeably to the mode prescribed by the said compact, shall be considered as a part of this constitution.

ARTICLE IX.

The legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money, for the slaves so emancipated: they shall have no power to prevent emigrants to this state, from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: that they shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to the county in which they reside: they shall have full power to prevent slaves being brought into this state as merchandize: they shall have full power to prevent any slave being brought into this state from a foreign country, and to prevent those from being brought into this state, who have been since the first day of January one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary, to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provisions, to abstain from all injuries to them extending to life or limb, and in case of their neglect, or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.

ARTICLE X.

1. The place for the seat of government shall be fixed in the following manner: the house of representatives shall, during their session, which shall be held in the year one thousand seven hundred and ninety two, chuse, by ballot, twenty-one persons, from whom the representation from Mercer and Fayette counties then present, shall alternately strike out one, until the number shall be reduced to five, who or any three of them concurring in opinion, shall have power to fix on the place for the seat of government, to receive grants from individuals therefor, and to make such conditions with

the proprietor or proprietors of the land so pitched on by them, as to them shall seem right, and shall be agreed to by the said proprietor or proprietors; and lay off a town thereon, in such manner as they shall judge most proper.

2. The general assembly and the supreme courts shall within five years, hold their sessions at the place so pitched upon by the said commissioners; and the seat of government so fixed, shall continue until it shall be changed by two-thirds of both branches of the legislature; the commissioners, before they proceed to act, shall take an oath or make affirmation that they will discharge the trust reposed in them, in such manner as in their judgment will be most beneficial to the state at large.

ARTICLE XI.

That the citizens of this state may have an opportunity to amend or change this constitution in a peaceable manner, if, to them it shall seem expedient; the persons qualified to vote for representatives, shall, at the general election to be held in the year one thousand seven hundred and ninety-seven, vote also by ballot, for or against a convention, as they shall severally choose to do; and if thereupon it shall appear that a majority of all the citizens in the state voting for representatives, have voted for a convention, the general assembly shall direct that a similar ballot shall be taken the next year; and if thereupon, it shall also appear that a majority of all the citizens of the state voting for representatives have voted for a convention, the general assembly shall at their next session, call a convention to consist of as many members as there shall be in the house of representatives, to be chosen in the same manner, at the same places and at the same time that representatives are, by the citizens entitled to vote for representatives, and to meet within three months after the said election, for the purpose of re-adopting, amending or changing this constitution. If it shall appear upon the ballot of either year, that a majority of the citizens voting for representatives is not in favour of a convention being called, it shall not be done until two-thirds of both branches of the legislature shall deem it expedient.

ARTICLE XII.

That the general, great and essential principles of liberty and free government may be recognized and established;
WE DECLARE,

I. That all men, when they form a social compact, are equal, and that no man or set of men are entitled to exclusive separate public emoluments or privileges from the community, but in consideration of public services.

II. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends, they have at all times an unalienable and indefeasible right to alter, reform or abolish their government, in such manner as they may think proper.

III. That all men have a natural and indefeasible right to worship Almighty God, according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever, control or interfere with the rights of conscience, and that no preference shall ever be given by law, to any religious societies or modes of worship.

IV. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

V. That all elections shall be free and equal.

VI. That trial by jury shall be as heretofore, and the right thereof remain inviolate.

VII. That printing presses shall be free to every person who undertakes to examine the proceedings of the legislature or any branch of government; and no law shall ever be made to restrain the right thereof: the free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

VIII. In prosecutions for the publication of papers, investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have a right to determine the law and the facts under the direction of the court as in other cases.

IX. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable seizures and searches; and that no warrant to search any place or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

X. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel ; to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favour ; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage ; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty or property, unless by the judgment of his peers, or the law of the land.

XI. That no person shall for any indictable offence be proceeded against criminally by information ; except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office.

XII. No person shall, for the same offence, be twice put in jeopardy of his life or limb ; nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

XIII. That all courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law ; and right and justice administered, without sale, denial or delay.

XIV. That no power of suspending laws shall be exercised, unless by the legislature or its authority.

XV. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

XVI. That all prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or presumption great ; and the privilege of the writ of habeas corpus, shall not be suspended unless when in cases of rebellion or invasion, the public safety may require it.

XVII. That the person of a debtor where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

XVIII. That no ex post facto law, nor any law impairing contracts shall be made.

XIX. That no person shall be attainted of treason or felony by the legislature.

XX. That no attainder shall work corruption of blood, nor except during the life of the offender, forfeiture of estate to the commonwealth.

CONSTITUTION OF THE

XXI. The estates of such person as shall destroy their own lives, shall descend or vest as in case of natural death, and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

XXII. That the citizens have a right in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition, address or remonstrance.

XXIII. The rights of the citizens to bear arms in defence of themselves and the state shall not be questioned.

XXIV. That no standing army shall in time of peace, be kept up without the consent of the legislature, and the military shall in all cases and at all times be in strict subordination to the civil power.

XXV. That no soldier shall in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

XXVI. That the legislature shall not grant any title of nobility or hereditary distinction, nor create any office the appointment of which shall be for a longer time than during good behaviour.

XXVII. That emigration from the state shall not be prohibited.

XXVIII. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto or contrary to this constitution shall be void.

SCHEDULE.

That no inconvenience may arise from the establishing the government of this state, and in order to carry the same into complete operation, it is hereby declared and ordained,

SEC. 1. That all rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, shall continue as if the said government had not been established.

2. That all officers civil and military now in commission under the state of Virginia, shall continue to hold and exercise their offices until the tenth day of August next and no longer.

3. That until the first enumeration shall be made as directed by the sixth section of the first article of this constitution,

the county of Jefferson shall be entitled to elect three representatives ; the county of Lincoln four representatives ; the county of Fayette nine representatives ; the county of Nelson six representatives ; the county of Mercer four representatives ; the county of Madison three representatives ; the county of Bourbon five representatives ; the county of Woodford four representatives ; and the county of Mason two representatives.

4. The general assembly shall meet at Lexington on the fourth day of June next.

5. All returns herein directed to be made to the secretary, shall, previously to his appointment, be made to the clerk of the supreme court for the district of Kentucky.

6. Until a seal shall be procured for the state, the governor shall be at liberty to use his private seal.

7. The oaths of office herein directed to be taken may be administered by any justice of the peace, until the legislature shall otherwise direct.

8. All bonds given by any officer within the district of Kentucky, payable to the governor of Virginia, may be prosecuted in the name of the governor of Kentucky.

9. All offences against the laws of Virginia, which have been committed within the present district of Kentucky, or which may be committed within the same before the first day of June next, shall be cognizable in the courts of this state in the same manner that they would be, if they were committed within this state, after the said first day of June.

10. At the elections herein directed to be held in May next, the sheriff of each county, or in case of his absence, one of his deputies shall preside, and if they neglect or refuse to act, the said election shall be held by any one of the justices of the peace for the county where such refusal or neglect shall happen ; each officer holding such election having first taken an oath before a justice of the peace to conduct the said election with impartiality, shall have power to administer to any person offering to vote at such election, the following oath or affirmation : " I do swear, (or affirm) that I am qualified to vote for representatives in the county of _____ agreeably to the constitution formed for the state of Kentucky," and such officer shall have a right to refuse to receive the vote of any person who shall refuse to take the said oath or make affirmation when tendered to him. And the said elections shall be held at the several places appointed for holding courts in the different counties.

NEW CONSTITUTION

11. The government of the commonwealth of Kentucky, shall commence on the first day of June next.

Done in Convention, at Danville, the nineteenth day of April, one thousand seven hundred and ninety-two, and of the independence of the United States of America, the sixteenth.

By order of the Convention,

SAMUEL McDOWELL, P. C.

Attest, THOMAS TODD, C. C.

 THE CONSTITUTION,

OR FORM OF GOVERNMENT, FOR THE STATE OF
KENTUCKY.

WE, the Representatives of the people of the state of Kentucky, in Convention assembled, to secure to all the citizens thereof, the enjoyment of the right of life, liberty, and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

 ARTICLE I.

Concerning the distribution of the powers of the government.

SEC. 1. The powers of the government of the state of Kentucky, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative to one; those which are executive to another; and those which are judiciary to another.

2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others; except in the instances hereinafter expressly directed or permitted.

 ARTICLE II.

Concerning the Legislative Department.

SEC. 1. The legislative power of this commonwealth shall be vested in two distinct branches; the one to be stiled the

house of representatives, the other the senate, and both together, the general assembly of the commonwealth of Kentucky.

2. The members of the house of representatives shall continue in service for the term of one year from the day of the commencement of the general election, and no longer.

3. Representatives shall be chosen on the first Monday in the month of August in every year ; but the presiding officers of the several elections shall continue the same for three days, at the request of any one of the candidates.

4. No person shall be a representative, who at the time of his election is not a citizen of the United States, and hath not attained to the age of twenty-four years, and resided in this state two years next preceding his election, and the last year thereof in the county or town for which he may be chosen.

5. Elections for representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, or in the several election precincts into which the legislature may think proper, from time to time, to divide any or all of those counties: Provided, that when it shall appear to the legislature that any town hath a number of qualified voters equal to the ratio then fixed, such town shall be invested with the privilege of a separate representation, which shall be retained so long as such town shall contain a number of qualified voters equal to the ratio which may from time to time be fixed by law ; and thereafter elections for the county in which such town is situated, shall not be held therein.

6. Representation shall be equal and uniform in this commonwealth ; and shall be forever regulated and ascertained by the number of qualified electors therein. In the year eighteen hundred and three, and every fourth year thereafter, an enumeration of all the free male inhabitants of the state, above twenty-one years of age, shall be made in such manner as shall be directed by law. The number of representatives shall, in the several years of making these enumerations, be so fixed, as not to be less than fifty-eight, nor more than one hundred, and they shall be apportioned for the four years next following, as near as may be, among the several counties and towns in proportion to the number of qualified electors ; but, when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county or counties may not have a resi-

duum or residuums, which, when added to the small county would entitle it to a separate representation, it shall then be in the power of the legislature to join two or more together for the purpose of sending a representative: Provided, that when there are two or more counties adjoining which have residuums over and above the ratio then fixed by law; if said residuums when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

7. The house of representatives shall chuse its speaker and other officers.

8. In all elections for representatives, every free male citizen (negroes, mulattoes, and Indians, excepted) who at the time being, hath attained to the age of twenty-one years, and resided in the state two years, or the county or town in which he offers to vote one year next preceding the election, shall enjoy the right of an elector, but no person shall be entitled to vote, except in the county or town in which he may actually reside at the time of the election, except as is herein otherwise provided. Electors shall in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at, going to, and returning from elections.

9. The members of the senate shall be chosen for the term of four years; and when assembled shall have the power to choose its officers annually.

10. At the first session of the general assembly after this constitution takes effect, the senators shall be divided by lot, as equally as may be, into four classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; of the third class, at the expiration of the third year; and of the fourth class, at the expiration of the fourth year; so that one fourth shall be chosen every year, and a rotation thereby kept up perpetually.

11. The senate shall consist of twenty-four members at least, and for every three members above fifty-eight which shall be added to the house of representatives, one member shall be added to the senate.

12. The same number of senatorial districts shall, from time to time, be established by the legislature, as there may then be senators allotted to the state; which shall be so formed, as to contain, as near as may be, an equal number of free male inhabitants in each above the age of twenty-one years,

and so that no county shall be divided, or form more than one district; and where two or more counties compose a district, they shall be adjoining.

13. When an additional senator may be added to the senate, he shall be annexed by lot to one of the four classes, so as to keep them as nearly equal in numbers as possible.

14. One senator for each district shall be elected by those qualified to vote for representatives therein, who shall give their votes at the several places in the counties or towns, where elections are by law directed to be held.

15. No person shall be a senator, who, at the time of his election is not a citizen of the United States, and who hath not attained to the age of thirty-five years, and resided in this state six years next preceding his election, and the last year thereof in the district for which he may be chosen.

16. The first election for senators shall be general throughout the state, and at the same time that the general election for representatives is held; and thereafter, there shall, in like manner, be an annual election for senators to fill the places of those whose time of service may have expired.

16. The general assembly shall convene on the first Monday in the month of November in every year, unless a different day be appointed by law, and their sessions shall be held at the seat of government.

18. Not less than a majority of the members of each house of the general assembly shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorised by law to compel the attendance of absent members, in such manner, and under such penalties as may be prescribed thereby.

19. Each house of the general assembly shall judge of the qualifications, elections and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

20. Each house of the general assembly may determine the rules of its proceedings; punish a member for disorderly behaviour; and with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

21. Each house of the general assembly shall keep and publish weekly a journal of its proceedings; and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on their journal.

22. Neither house, during the session of the general as-

sembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

23. The members of the general assembly shall severally receive from the public treasury, a compensation for their services, which shall be one dollar and a half a day, during their attendance on, going to, and returning from the sessions of their respective houses: Provided, that the same may be increased or diminished by law; but no alteration shall take effect during the session, at which such alteration shall be made.

24. The members of the general assembly shall in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to, and returning from the same; and for any speech or debate, in either house, they shall not be questioned in any other place.

25. No senator or representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this commonwealth, which shall have been created, or the emoluments of which shall have been increased, during the time such senator or representative was in office, except to such offices or appointments as may be made or filled by the elections of the people.

26. No person while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect; nor whilst he holds or exercises any office of profit under this commonwealth, shall be eligible to the general assembly; except attornies at law, justices of the peace, and militia officers: Provided, that justices of the courts of quarter sessions shall be ineligible, so long as any compensation may be allowed them for their services: Provided also, that attornies for the commonwealth, who receive a fixed annual salary from the public treasury, shall be ineligible.

27. No person, who at any time, may have been a collector of taxes for the state, or the assistant or deputy of such collector, shall be eligible to the general assembly until he shall have obtained a quietus for the amount of such collection, and for all public monies for which he may be responsible.

28. No bill shall have the force of a law, until on three several days, it be read over in each house of the general assembly, and free discussion allowed thereon; unless in cases of

urgency four-fifths of the house where the bill shall be depending may deem it expedient to dispense with this rule.

29. All bills for raising revenue, shall originate in the house of representatives; but the senate may propose amendments, as in other bills: Provided, that they shall not introduce any new matter, under the colour of an amendment, which does not relate to raising a revenue.

30. The general assembly shall regulate by law, by whom, and in what manner, writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

ARTICLE III.

Concerning the Executive Department.

SEC. 1. The supreme executive power of the commonwealth shall be vested in a chief magistrate, who shall be stiled the Governor of the commonwealth of Kentucky.

2. The Governor shall be elected for the term of four years by the citizens entitled to suffrage, at the time and places where they shall respectively vote for representatives. The person having the highest number of votes shall be governor; but if two or more shall be equal, and highest in votes, the election shall be determined by lot, in such manner as the legislature may direct.

3. The governor shall be ineligible for the succeeding seven years, after the expiration of the time for which he shall have been elected.

4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this state at least six years next preceding his election.

5. He shall commence the execution of his office on the fourth Tuesday succeeding the day of the commencement of the general election on which he shall be chosen, and shall continue in the execution thereof until the end of four weeks next succeeding the election of his successor, and until his successor shall have taken the oaths or affirmations prescribed by this constitution.

6. No member of congress or person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of governor.

7. The governor shall at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

8. He shall be commander in chief of the army and navy

of this commonwealth, and of the militia thereof, except when they shall be called into the service of the United States ; but he shall not command personally in the field, unless he shall be advised so to do, by a resolution of the general assembly.

9. He shall nominate, and by and with the advice and consent of the senate, appoint all officers, whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for : Provided, that no person shall be so appointed to an office within any county, who shall not have been a citizen and inhabitant therein, one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties from which it shall have been taken : Provided also, that the county courts shall be authorised by law to appoint inspectors, collectors and their deputies, surveyors of the highways, constables, jailors, and such other inferior officers, whose jurisdiction may be confined within the limits of a county.

10. The governor shall have power to fill up vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

11. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the general assembly ; in which the power of pardoning shall be vested.

12. He may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices.

13. He shall from time to time give to the general assembly, information of the state of the commonwealth, and recommend to their consideration such measures as he shall deem expedient.

14. He may on extraordinary occasions convene the general assembly at the seat of government, or at a different place, if that should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders ; and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

15. He shall take care that the laws be faithfully executed.

16. A lieutenant-governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, possess the same qualifications. In voting for a governor and lieutenant-governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor.

17. He shall by virtue of his office be speaker of the senate, have a right when in committee of the whole, to debate and vote on all subjects: and when the senate are equally divided, to give the casting vote.

18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until another be duly qualified, or the governor absent, or impeached, shall return, or be acquitted.

19. Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker, for that occasion. And if during the vacancy of the office of governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government.

20. The lieutenant governor while he acts as speaker to the senate shall receive for his services the same compensation, which shall for the same period, be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government, as governor, shall receive the same compensation, which the governor would have received and been entitled to, had he been employed in the duties of his office.

21. The speaker *pro tempore* of the senate, during the time he administers the government, shall receive in like manner the same compensation, which the governor would have received, had he been employed in the duties of his office.

22. If the lieutenant governor shall be called upon to administer the government, and shall while in such administration resign, die, or be absent from the state during the recess of the general assembly, it shall be the duty of the secretary for the time being, to convene the senate for the purpose of choosing a speaker.

23. An attorney general and such other attorneys for the

commonwealth as may be necessary shall be appointed, whose duty shall be regulated by law. Attornies for the commonwealth for the several counties shall be appointed by the respective courts having jurisdiction therein.

24. A secretary shall be appointed and commissioned during the term for which the governor shall have been elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts and proceedings of the governor, and shall when required, lay the same and all papers, minutes and vouchers relative thereto, before either house of the general assembly, and shall perform such other duties as may be enjoined him by law.

25. Every bill which shall have passed both houses shall be presented to the governor, if he approve he shall sign it, but if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it: if after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be considered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively; if any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it; unless the general assembly by their adjournment prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

26. Every order, resolution or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him; or, being disapproved, shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

27. Contested elections for a governor and lieutenant governor, shall be determined by a committee to be selected from both houses of the general assembly, and formed and regulated in such manner as shall be directed by law.

28. The freemen of this commonwealth (negroes, mulat-

toes and Indians excepted) shall be armed and disciplined for its defence. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

29. The commanding officers of the respective regiments shall appoint the regimental staff; brigadier generals their brigade majors; major generals, their aids; and captains, the non-commissioned officers of companies.

30. A majority of the field officers and captains in each regiment, shall nominate the commissioned officers in each company, who shall be commissioned by the governor: Provided that no nomination shall be made, unless two at least of the field officers are present; and when two or more persons have an equal and the highest number of votes, the field officer present, who may be highest in commission, shall decide the nomination.

31. Sheriffs shall hereafter be appointed in the following manner:—When the time of a sheriff for any county may be about to expire, the county court for the same (a majority of all its justices being present) shall in the months of September, October or November next preceding thereto, recommend to the governor two proper persons to fill the office, who are then justices of the county court: and who shall in such recommendation pay a just regard to seniority in office and a regular rotation. One of the persons so recommended shall be commissioned by the governor, and shall hold his office for two years if he so long behave well, and until a successor be duly qualified. If the county court shall omit in the months aforesaid to make such recommendation, the governor shall then nominate and by and with the advice and consent of the senate, appoint a fit person to fill such office.

ARTICLE IV.

Concerning the Judicial Department,

SEC. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, which shall be stiled the court of appeals, and in such inferior courts as the general assembly may from time to time erect and establish.

2. The court of appeals, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only; which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law.

3. The judges both of the supreme and inferior courts shall hold their offices during good behaviour; but for any reasonable cause which shall not be sufficient ground of impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: Provided, however, that the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall at stated times receive for their services an adequate compensation, to be fixed by law.

4. The judges shall, by virtue of their office, be conservators of the peace throughout the state. The stile of all process shall be "The commonwealth of Kentucky." All prosecutions shall be carried on in the name, and by the authority of the commonwealth of Kentucky, and conclude against the peace and dignity of the same.

5. There shall be established in each county now, or which may hereafter be erected, within this commonwealth, a county court.

6. A competent number of justices of the peace, shall be appointed in each county; they shall be commissioned during good behaviour, but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of two-thirds of each house of the general assembly: Provided, however, that the cause or causes for which such removal may be required, shall be stated at length in such address and on the journal of each house.

7. The number of the justices of the peace, to which the several counties in this commonwealth now established, or which may hereafter be established, ought to be entitled, shall from time to time be regulated by law.

8. When a surveyor, a coroner, or a justice of the peace shall be needed in any county, the county court for the same, a majority of all its justices concurring therein, shall recommend to the governor two proper persons to fill the office, one of whom he shall appoint thereto: Provided, however, that if the county court shall for twelve months omit to make such recommendation, after being requested by the governor to recommend proper persons, he shall then nominate, and by and with the advice and consent of the senate, appoint a fit person to fill such office.

9. When a new county shall be erected, a competent number of justices of the peace, a sheriff and coroner therefor, shall be recommended to the governor by a majority of

all the members of the house of representatives from the senatorial district or districts in which the county is situated—and if either of the persons thus recommended shall be rejected by the governor or the senate, another person shall immediately be recommended as aforesaid.

10. Each court shall appoint its own clerk, who shall hold his office during good behaviour; but no person shall be appointed clerk, only pro tempore, who shall not produce to the court appointing him, a certificate from a majority of the judges of the court of appeals, that he had been examined by their clerk in their presence, and under their direction, and that they judge him to be well qualified to execute the office of clerk, to any court of the same dignity, with that for which he offers himself. They shall be removable for breach of good behaviour by the court of appeals only, who shall be judges of the fact as well as of the law. Two thirds of the members present must concur in the sentence.

11. All commissions shall be in the name, and by the authority of the state of Kentucky, and sealed with the state seal, and signed by the governor.

12. The state treasurer and printer or printers for the commonwealth, shall be appointed annually by the joint vote of both houses of the general assembly: Provided that during the recess of the same, the governor shall have power to fill vacancies which may happen in either of the said offices.

ARTICLE V.

Concerning Impeachments.

Sec. 1. The house of representatives shall have the sole power of impeaching.

2. All impeachments shall be tried by the senate: when sitting for that purpose, the senators shall be upon oath or affirmation: No person shall be convicted without the concurrence of two thirds of the members present.

3. The governor and all civil officers, shall be liable to impeachment for any misdemeanor in office; but judgment, in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment according to law.

ARTICLE VI.

General Provisions.

SEC. 1. Members of the general assembly, and all officers, executive and judicial, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: "I do solemnly swear (or affirm as the case may be) that I will be faithful and true to the commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of _____ according to law."

2. Treason against the commonwealth, shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

3. Every person shall be disqualified from serving as a governor, lieutenant governor, senator or representative, for the term for which he shall have been elected, who shall be convicted of having given, or offered any bribe or treat, to procure his election.

4. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices.

5. No money shall be drawn from the treasury, but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than one year; and a regular statement and account of the receipts and expenditures of all public money, shall be published annually.

6. The general assembly shall direct by law in what manner, and in what courts, suits may be brought against the commonwealth.

7. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the general assembly the most solemn appeal to God.

8. All laws which on the first day of June one thousand seven hundred and ninety-two were in force in the state of Virginia, and which are of a general nature, and not local to that state, and not repugnant to this constitution, nor to the

laws which have been enacted by the legislature of this commonwealth, shall be in force within this state, until they shall be altered or repealed by the general assembly.

9. The compact with the state of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this constitution.

10. It shall be the duty of the general assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may chuse that summary mode of adjustment.

11. All civil officers for the commonwealth at large shall reside within the state, and all district, county, or town officers, within their respective districts, counties, or towns, (trustees of towns excepted) and shall keep their respective offices at such places therein, as may be required by law: and all militia officers, shall reside in the bounds of the division, brigade, regiment, battallion, or company to which they may severally belong.

12. The attorney-general and other attornies for this commonwealth who receive a fixed annual salary from the public treasury, judges and clerks of courts, justices of the peace, surveyors of lands, and all commissioned militia officers, shall hold their respective offices during good behaviour and the continuance of their respective courts, under the exceptions contained in this constitution.

13. Absence on the business of this state, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this commonwealth, under the exceptions contained in this constitution.

14. It shall be the duty of the general assembly to regulate by law, in what cases, and what deduction from the salaries of public officers shall be made for neglect of duty in their official capacity.

15. Returns for all elections for governor, lieutenant-governor, and members of the general assembly, shall be made to the secretary for the time being.

16. In all elections by the people, and also by the senate and house of representatives, jointly or separately, the votes shall be personally and publicly given, viva voce.

17. No member of congress nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligi-

ble as a member of the general assembly of this commonwealth, or hold or exercise any office of trust or profit under the same.

18. The general assembly shall direct by law how persons who are or who may hereafter become securities for public officers, may be relieved or discharged on account of such securityship.

ARTICLE VII.

Concerning Slaves.

SEC. 1. The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves, so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state. They shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to any county in this commonwealth.—They shall have full power to prevent slaves being brought into this state as merchandise.—They shall have full power to prevent any slaves being brought into this state from a foreign country, and to prevent those from being brought into this state, who have been since the first day of January, one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary, to oblige the owners of slaves to treat them with humanity, to provide for them necessary cloathing and provision, to abstain from all injuries to them extending to life or limb, and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.

2. In the prosecution of slaves for felony, no inquest by a grand jury, shall be necessary, but the proceedings in such prosecutions shall be regulated by law; except that the general assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.

ARTICLE VIII.

The seat of government shall continue in the town of Frankfort, until it shall be removed by law; Provided how-

ever, that two thirds of all the members elected to each house of the general assembly, shall concur in the passage of such law.

ARTICLE IX.

Mode of revising the Constitution.

When experience shall point out the necessity of amending this constitution, and when a majority of all the members elected to each house of the general assembly, shall within the first twenty days of their stated annual session, concur in passing a law for taking the sense of the good people of this commonwealth as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs and others returning officers at the next general election which shall be held for representatives, after the passage of such law to open a poll for, and make a return to the secretary for the time being, of the names of all those entitled to vote for representatives who have voted for calling a convention: and if thereupon it shall appear that a majority of all the citizens of this state entitled to vote for representatives, have voted for a convention, the general assembly shall direct that a similar poll shall be opened, and taken for the next year; and if thereupon it shall appear, that a majority of all the citizens of this state entitled to vote for representatives, have voted for a convention, the general assembly shall at their next session call a convention, to consist of as many members as there shall be in the house of representatives, and no more: to be chosen in the same manner and proportion, at the same places, and at the same time, that representatives are, by citizens entitled to vote for representatives; and to meet within three months after the said election, for the purpose of re-adopting, amending, or changing this constitution. But if it shall appear by the votes of either year as aforesaid, that a majority of all the citizens entitled to vote for representatives, did not vote for a convention, a convention shall not be called,

ARTICLE X.

That the general, great and essential principles of liberty and free government may be recognised and established:
WE DECLARE,

SEC. 1. That all freemen, when they form a social compact, are equal, and that no man or set of men, are entitled to exclusive, separate, public emoluments or privileges from the community, but in consideration of public services.

2. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness : For the advancement of these ends, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent ; that no human authority ought, in any case whatever, to controul or interfere with the rights of conscience ; and that no preference shall ever be given by law, to any religious societies or modes of worship.

4. That the civil rights, privileges, or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

5. That all elections shall be free and equal.

6. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate.

7. That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature or any branch of government ; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

8. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

9. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches , and that no warrant to search any place or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

10. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel ; to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining

witnesses in his favour: and in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

11. That no person shall for any indictable offence be proceeded against criminally by information, except in cases arising in the land and naval forces, or in the militia when in actual service, in time of war or public danger, by leave of the court for oppression or misdemeanor in office.

12. No person shall for the same offence be twice put in jeopardy of his life or limb, nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

13. That all courts shall be open, and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered without sale, denial, or delay.

14. That no power of suspending laws shall be exercised, unless by the legislature or its authority.

15. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

16. That all prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident, or presumption great; and the privilege of the writ of habeas corpus, shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

17. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

18. That no ex post facto law, nor any law impairing contracts, shall be made.

19. That no person shall be attainted of treason or felony by the legislature.

20. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth.

21. That the estate of such persons as shall destroy their own lives shall descend or vest as in case of natural death, and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

22. That the citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of the government for redress of grievances, or other proper purposes by petition, address, or remonstrance.

23. That the rights of the citizens to bear arms in defence of themselves and the state, shall not be questioned.

24. That no standing army shall in time of peace, be kept up without the consent of the legislature, and the military shall in all cases, and at all times, be in strict subordination to the civil power.

25. That no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

26. That the legislature shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment to which shall be for a longer term than during good behaviour.

27. That emigration from the state shall not be prohibited.

28. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto or contrary to this constitution, shall be void.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the constitution of this commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained:

SEC. 1. That all laws of this commonwealth in force at the time of making the said alterations and amendments, and not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts, as well of individuals, as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

2. That all officers now filling any office or appointment, shall continue in the exercise of the duties of their respective offices or appointments for the terms therein expressed, unless by this constitution it is otherwise directed.

3. The oaths of office herein directed to be taken, may be administered by any justice of the peace, until the legislature shall otherwise direct.

4. The general assembly to be held in November next,

shall apportion the representatives and senators, and lay off the state into senatorial districts conformable to the regulations prescribed by this constitution. In fixing those apportionments, and in establishing those districts, they shall take for their guide the enumeration directed by law to be made in the present year, by the commissioners of the tax, and the apportionments thus made shall remain unaltered until the end of the stated annual sessions of the general assembly in the year eighteen hundred and three.

5. In order that no inconvenience may arise from the change made by this constitution, in the time of holding the general election, it is hereby ordained, that the first election for governor, lieutenant governor, and members of the general assembly, shall commence on the first Monday in May in the year eighteen hundred. The persons then elected shall continue in office during their several terms of service prescribed by this constitution, and until the next general election, which shall be held after their said terms shall have respectively expired. The returns for the said first election of governor and lieutenant governor shall be made to the secretary, within fifteen days from the day of election, who shall as soon as may be examine and count the same in the presence of at least two judges of the court of appeals, or district courts, and shall declare who are the persons thereby duly elected, and give them official notice of their election; and if any person shall be equal and highest on the poll, the said judges and secretary shall determine the election by lot.

6. This constitution, except so much thereof as is therein otherwise directed, shall not be in force, until the first day of June in the year 1800; on which day the whole thereof shall take full and complete effect.

Done in Convention at Frankfort, the seventeenth day of August, one thousand seven hundred and ninety-nine, and of the Independence of the United States of America the twenty-fourth.

ALEXANDER S. BULLITT, P. C.

Member from Jefferson.

Bourbon,
John Allen,
Charles Smith,
Robert Wilmot,
James Duncan,
William Griffith,

Nathaniel Rogers,
Brackin,
Philip Buckner,
Campbell.
Thomas Sandford.

Clarke,
 Robert Clarke,
 R. Hickman,
 William Sudduth.
Christian,
 Young Ewing,
Fayette,
 John Breckinridge,
 John M'Dowell,
 John Bell,
 H. Harrison,
 B. Thruston,
 Walter Carr,
Franklin,
 Harry Innes,
 John Logan,
Fleming,
 George Stockton,
Garrard,
 William M. Bledsoe,
Green,
 William Casey,
Harrison,
 Henry Coleman,
 William E. Boswell,
Jefferson,
 Richard Taylor,
Jessamine,
 John Price,
Lincoln,
 William Logan,
 N. Huston,
Logan,
 John Bailey,

Reuben Ewing,
Mason,
 Philemon Thomas,
 Thomas Marshall, jr.
 Joshua Baker,
Mercer,
 Peter Brunner,
 John Adair,
 Thomas Allen,
 Samuel Taylor,
Madison,
 Green Clay,
 Thomas Clay,
 William Irvine,
Montgomery,
 Jilson Payne,
Nelson,
 John Rowan,
 Richard Prather,
 Nicholas Minor,
Shelby,
 Benjamin Logan,
 Abraham Owen,
Scott,
 William Henry,
 Robert Johnson,
Woodford,
 Caleb Wallace,
 William Steele,
Washington,
 Felix Grundy,
 Robert Abell,
Warren,
 Alexander Davison.

ACTS
OF THE
GENERAL ASSEMBLY
OF
KENTUCKY.

PASSED AT THE SESSION WHICH COMMENCED ON MON-
DAY, THE FOURTH OF JUNE, 1792.

CHAPTER I.

*An ACT establishing an Auditor's Office of Public
Accounts.*

1792.

Approved June 22, 1792.

This act and another passed this session, (Chap. 13) and one passed in 1794, (Chap. 172) are the basis of an act passed at the January session, 1798, (Vol. II. Chap. 65,) entitled an act to reduce into one the several acts concerning the Auditor and Treasurer; which last act was amended at the session of 1807, (Vol. III. Chap. 531.)

SECTION 1. **B**E it enacted by the General Assembly, An auditor to be appointed. That there shall be an auditor of public accounts, to continue in office during good behaviour. The auditor so appointed shall not be capable of acting until he shall have taken the oath of fidelity to the commonwealth, and also an oath impartially and honestly to execute the duties of his office.

SEC. 2. The said auditor is authorised and required, His duty. to state and keep an exact account of all articles of debit or credit hereafter to arise between this commonwealth and the United States of America, or any of them, to raise and keep accounts with all officers of civil government who are entitled to receive from the public treasu-

1792.

{

ry, salaries or wages fixed by law, to audit all accounts of wages due to the members of the general assembly for service therein, or for their travelling allowance ; such attendance and allowance being previously entered with the clerk of the house of which such member is, in separate books to be kept for that purpose, and to lie during the session on the table of the house, and being certified by the said clerk to be so entered ; and to audit accounts for salaries of wages to the officers and attendants of the two houses ; to settle the expences of providing maces, lights, fuel, blank-books, parchment, paper and other articles necessary for the use of the governor or either house ; to audit all accounts for building or repairing houses or other articles of public property, such building or repairs being authorised by act of assembly, or the previous vote of the two houses of assembly : to enter in account all other demands for money on the treasurer made under authority of any law hereafter to be passed ; to settle the accounts of all public debtors and of all collectors of any revenue, or tax, levied by act of general assembly, and payable to the treasurer, or of any monies due to the public, to call upon such debtors to render account at proper times, and on their failure so to do, to instruct the attorney-general to institute proceedings at law for compelling them to justice, and though it should appear on trial that the defendant oweth no balance to the public yet his having failed to render account to the auditor, and to take from him his quietus, shall subject him to the payment of all costs incurred by such proceedings to the commonwealth ; to require information on oath from any person, party or privy, of matter relative to any account under his examination and material for his information ; to require counsel of the attorney-general on all doubts in matters of law, relative to the duties of his office, to state and keep all the accounts, so as to shew the amount of all warrants & certificates given on the treasurer, for what service or article of public expences they were given, and to lay before the assembly annually the said general accounts together with an account of all balances due to and from the public as near as he shall be able. And that he shall keep his office at the place at which the legislature shall hold their sessions.

May require
information on
oath.

Attorney general
to give au-
ditor his opini-
on.

SEC. 3. *And be it further enacted, That the services*

heretofore required by any act or acts of the assembly of Virginia to be performed by the solicitor, be and the same is hereby directed to be performed by the auditor. 1792.
To act as solicitor.

CHAPTER II.

An ACT for dividing the county of Nelson.

Approved, June 22d, 1792.

The first section describes the boundary, for which see Chap. 295 of this volume. The remaining sections were temporary, and have had their effect. Washington county formed.

CHAPTER III.

An ACT for dividing the county of Woodford.

Approved, June 22d, 1792.

For the boundary of the new county, see Chap. 295 of this volume. The remaining sections were temporary, and similar to those of the foregoing act. Scott county formed.

CHAPTER IV.

An ACT for dividing the county of Jefferson.

Approved, June 23d, 1792.

The first section describes the boundary, for which see Chap. 295 of this volume. The remaining sections (like those of the two preceding acts,) were temporary, and have had their effect. Shelby county formed.

CHAPTER V.

An ACT concerning Surveyors.

Approved, June 23d, 1792.

This act was only temporary; the provisions of it, however, are supplied by a clause in the new constitution, and by an act of 1806, (Vol. III. Chap. 403.)

SECTION 1. *BE it enacted by the general assembly,* That there shall be appointed in each county throughout this state a surveyor, well qualified; who shall hold his office during good behavior, shall reside within his county, and before he shall be capable of entering upon the execution of his office, shall in the court of the same county give assurance of fidelity to the commonwealth in the form prescribed by the constitution, and also take the oath of office as prescribed by law. Surveyor to be appointed in each county.

SEC. 2. *And be it further enacted,* That no previous

JUNE SESSION.

1792.

Repealing
clause.Commence-
ment.

examination shall be necessary to authorise the governor and senate to make the appointments of surveyors.

SEC. 3. All laws respecting county surveyors which come within the purview of this act shall be and the same are hereby repealed.

SEC. 4. This act shall commence and be in force on the twenty-first day of June, one thousand seven hundred and ninety-two, and shall continue in force until the end of the next session of the assembly.

CHAPTER VI.

An ACT regulating the Annual Elections.

Approved, June 24th, 1792.

This act was repealed by an act passed at the November session following, purporting to amend it, (Chap. 67)—At the January session of 1798, an act was passed to reduce into one the several acts concerning elections, (Vol. II. Chap. 24.)—In 1799 a new law was passed on the subject in which the act of 1798 is repealed by name, together with all other acts and parts of acts within the purview of the repealing law, (Vol. II. Chap. 222)—In 1802 an act was passed authorising the governor to issue writs of election in certain cases, (Vol. III. Chap. 44)—At the session of 1807, a small amendatory act was passed, (Vol. III. Chap. 473.)

CHAPTER VII.

An ACT to arrange this state into divisions, brigades, regiments, battalions and companies, and for other purposes.

Approved, June 24th, 1792.

This is referable to the subject of militia—*Vide* the observations on Chap. 17.

CHAPTER VIII.

An ACT for the election of representatives pursuant to the constitution of government of the United States.

Approved, June 26th, 1792.

Another provision was made on this subject in 1799, (Vol. II. Chap. 222) and another act was passed in 1802, (Vol. III. Chap. 5)—The act is deemed not to be in force to any purpose whatever.

CHAPTER IX.

An ACT for establishing a Town at Woodford Court House.

Approved, June 23d, 1792.

WHEREAS, it has been represented to the present

general assembly, that the place fixed upon by the justices of the county of Woodford for holding courts and the erection of public buildings, is the property of Hezekiah Briscoe, who is an infant; that a town has been laid off contiguous thereto, and that John Briscoe, guardian to the said Hezekiah, has given his assent that 100 acres, including the square of two acres, reserved for public buildings, and the same now laid off for a town, may by a law be vested in trustees for the purposes aforesaid;

1792.

Preamble.

BE it enacted by the general assembly, That the said 100 acres of land shall be and the same is hereby vested in John Watkins, Richard Young, Cave Johnson, Marquis Calmes, Richard Fox, John Cooke, and Parmenas Briscoe, gentlemen, trustees, for the purpose of a town, and established as such by the name of VERSAILLES; and that the said trustees, or any three of them, shall have full power to lay off the same into lots and streets; dispose of the lots, and adopt such rules and regulations respecting the same, as to them shall seem just and reasonable; to execute deeds of conveyance in fee simple to the purchasers and also to the justices of the county, of the land reserved for public buildings; saving, however, to all persons and bodies politic, and corporate, other than those claiming under the said Hezekiah, all legal or equitable rights which they may have to the said 100 acres or any part thereof. *Provided,* nevertheless, that Richard Young and John Watkins, gentlemen, shall be appointed commissioners to sell the lots in the aforesaid town, and receive the money arising from the same, and pay the amount with lawful interest to the heir when he shall arrive at age; and that the said commissioners, so appointed, shall give bond and sufficient security in the court of the county for the faithful performance of their duty, before they proceed to act.

Land laid off.

Trustees.

Name.

Power of the trustees.

Proviso.

Proviso.

CHAPTER X.

An ACT for establishing a Permanent Revenue.

Approved, June 26th, 1792.

The mode of appointing commissioners under this law was changed by a subsequent act of this session, (Chap. 21)—The act itself was amended by one passed in 1793, (Chap. 127)—and by another passed in 1794, (Chap. 273) and again by one passed in 1795, (Chap. 202)—At the adjourned session.

1792

of 1796-7, an act was passed establishing a permanent revenue, (Chap. 307) which was amended by an act passed at the January session of 1798, (Vol. II. Chap. 34)—In 1799 another act was passed to amend and reduce into one the several acts establishing a permanent revenue, (Vol. II. Chap. 214)—In 1800 the last act was amended, (Vol. II. Chap. 305)—in 1801 this amendatory act was amended, (Vol. II. Chap. 371)—and again in 1804, (Vol. III. Chap. 211)—In 1805 another amendatory act was passed, (Vol. III. Chap. 315), and in 1806, the act of 1805 was amended, (Vol. III. Chap. 347.)

Taxes levied.

SECTION 1. *BE it enacted by the General Assembly,* That there shall be paid within this state the following taxes : for every hundred acres of land, and so in proportion for a greater or smaller quantity, two shillings ; for every slave, except such as have been or may be exempted by the county court from the payment of taxes on account of age or infirmity, two shillings ; for every horse, mare, colt or mule, eight pence, except for covering horses ; and for every covering horse, the sum which such horse covers one mare the season, which rate or sum the owner shall note down when he delivers in his list of property to the commissioners ; for every head of cattle three pence ; also six shillings a wheel on every coach or chariot ; for all other riding carriages with four wheels, except those used for the purposes of agriculture, four shillings a wheel ; and for all other riding carriages with two wheels, six shillings a wheel ; also ten pounds for every billiard table ; also three pounds for every ordinary license ; and also the sum of ten pounds for every retail store within this state ; which said taxes shall be paid annually in the manner hereinafter directed.

Commissioners to be appointed.

SEC. 2. There shall be appointed in each county within this state proper persons to be commissioners for the purposes hereinafter mentioned, that is to say, for the county of Mason, three ; for the county of Bourbon, three ; for the county of Fayette, three ; for the county of Woodford, three ; for the county of Jefferson, two ; for the county of Nelson, four ; for the county of Mercer, three ; for the county of Lincoln, four ; for the county of Madison, three. Each Commissioner so appointed shall take the following oath or affirmation before some magistrate of his county, before he begins to exercise the duties of his office : " I A. B. do solemnly swear or affirm (as the case may be) that as commissioner for county, I will to the best of my skill and judgment, diligently and faithfully execute the duties of the said office according to the directions of the act entitled an act esta-

I. YEAR OF THE COMMONWEALTH.

65

blishing a permanent revenue, without favor, affection or partiality, and that I will do equal right and justice, according to the best of my knowledge, in every case in which I shall act as commissioner, so help me God ;" a certificate of which oath shall be recorded in the court held for his county.

1792.



SEC. 3. The court of each county in which more than one commissioner is directed to be appointed shall lay off and ascertain the bounds of the district allotted to each commissioner—every commissioner shall perform the following duties within his district : He shall on the second day of August in the present year, and on the same in each succeeding year, begin and continue, proceeding without delay through his district, and call on every person therein subject to taxation, or having property in his or her possession or care, on which any tax is hereby imposed, for a written list thereof ; which list being corrected, if necessary, and distinctly read over by the commissioner to the person delivering the same, he or she shall then make oath or affirmation, that such list contains a true and perfect account of all persons and of every species of property belonging to or in his possession or care, within that district, subject to taxation on the first day of August then next preceding, and that no contract, change or removal whatever of property, had been made or entered into, or any other method devised, practised or used in order to evade the payment of taxes ; which oath or affirmation the commissioner is hereby empowered to administer. In case any person shall be absent from his place of residence at the time the commissioner calls to receive the list, and if it shall appear to the commissioner that such absence was not intentional, or done with a view of avoiding the delivery of such list, it shall be lawful for the commissioner to require the attendance of such absent person, with his or her list, at any time and place within his district ; and in case of his or her refusing or neglecting to attend at such time and place, the commissioner shall proceed in like manner as is hereinafter directed, in case of refusal to give in lists ; and the court shall determine on the circumstances of the case whether the party so neglecting or refusing to attend, shall be subject to the fine hereby imposed on those refusing to give in their lists, and shall give judgment accordingly. Each commissioner

County court
to lay off their
districts.

Their duties.

1792. shall make a return on oath to another commissioner of the same county, of all his taxable property, and shall then enter the same in the lists hereinafter directed to be made out by him of the taxable property within his district.

To make four
lists.

SEC. 4. That each of the said commissioners shall, after collecting the lists of property within his district in manner before directed, make four alphabetical general lists therefrom, shewing in columns according to the form hereto also annexed, the date when each list was received, the person chargeable with the tax or taxes, and the number or quantity of every species of property, inserting particularly the number of all free males above the age of twenty-one, and distinguishing those also subject to county levies; which lists shall be kept and delivered in the following manner: Each commissioner shall retain one of them in his own possession so long as he continues in office, and afterwards deliver it to his successor; another of the lists, together with the original lists taken from the individuals in his district, shall be returned to the clerk of his county, to be kept by him; who having examined the said lists and corrected any errors which may appear therein, shall certify that they are true copies: one other of the said lists, after being certified by the clerk, shall be delivered by the commissioner to the high sheriff of the county, as his guide to collect the taxes; and the remaining fourth list shall be transmitted by the commissioner to the auditor, to be kept by him and to be produced and admitted as evidence by any court on any suit or motion against the sheriff for the amount of taxes charged against him: all which lists is hereby declared to be the duty of the several commissioners to have delivered to the persons above named on or before the last day of October annually. The list in the clerk's office shall serve for laying the county levy and fixing the poor rates; and it may be examined, or copies had therefrom, at the charge of any person or persons desiring the same.

Clerk to com-
pare lists with
the deeds in his
office.

SEC. 5. The clerk of each county shall annually, at the time of examining the said lists, compare the same with the deeds that have been recorded in the office for lands within the district of such commissioner, or which shall be certified to have been recorded in any other court, and shall add the same to the said list.

SEC. 6. That the commissioners shall hold their offices for two years ; and in case any commissioner shall refuse to serve, not having a reasonable excuse in the opinion of the court of the county, he shall for such refusal forfeit and pay the sum of thirty pounds ; but any commissioner, after having served one year, may resign his office, provided he has completed the list of taxable property, as above directed, and given notice to the governor of such resignation, previous to the month of February, to enable him to appoint a successor. Every new commissioner shall call on his predecessor, or his legal representative, for all public papers in his or their hands, who, on refusal or neglect in delivering them, shall forfeit and pay the sum of fifty pounds.

1792.

Commissioners
to serve two
years.

SEC. 7. The court of each county shall make such allowances to the clerk for his services under this act as they shall think reasonable, to be included in the county levy ; and shall allow to each of the commissioners for their services the sum of six shillings for every day they shall severally make satisfactory proof to the court to have been actually engaged in the execution of this act, and they shall be exempted from militia duty during their continuance in office ; and the sheriff of each county is hereby directed and empowered to pay to the commissioners respectively the amount of their several allowances on receiving the clerk's certificate therefor ; and the amount of such certificates, with the party's receipt, shall be credited the sheriff by the auditor in the settlement of his account of taxes.

Their compensation.

SEC. 8. If any person shall give or deliver to a commissioner a false or fraudulent list of persons or property subject to taxation, or shall refuse to give a list on oath or affirmation, when required by the commissioners, the person or person or persons so refusing or giving a false or fraudulent list shall be liable to a fine of five pounds ; and the commissioner shall proceed to list such person's property agreeable to the best information he can procure ; and all such property so ascertained shall be moreover subject to a treble tax, to be collected and distrained for by the sheriff as in other cases ; which fines and treble taxes, shall be recovered in the county court, by the following mode of proceeding, and shall be applied as hereafter directed.

Penalty for delivering a fraudulent list.

SEC. 9. The commissioner shall give information

1792.

Proceedings
thereon.

thereof personally, or if unable to attend, in writing, to the next court held for his county ; which court shall forthwith direct the clerk to issue a summons, requiring the party to appear at the next court to be held for the county, to shew cause, if any he can, why he should not be fined and treble taxed for refusing to deliver in his list, or for giving in an imperfect or fraudulent list of taxables : and the person or persons upon being served therewith by the sheriff, and appearing, shall immediately plead to issue, and the matter thereof shall be enquired into by a jury, or the court, at the defendant's option ; or the person failing to appear on being summoned, the court shall proceed to give judgment and award execution for such fine and treble tax, unless for good cause to them shewn the court shall continue the same to the next court ; and the court shall certify the amount of such tax and fine to the sheriff and auditor, that the same may be collected and accounted for. The amount of the fine, after deducting thereout as much as may be necessary to pay the clerk's and sheriff's fees, and such allowance as the court may think reasonable to make to the commissioner for his extraordinary trouble on the occasion, shall be applied towards lessening the county levy ; and the treble tax shall be charged to the sheriff, and accounted for in like manner as the other taxes.

Penalty for neglect of duty.

Provido.

SEC. 10. For preventing frauds or impositions on the commissioners, any person having knowledge of any false or fraudulent list being given to the commissioners, shall give information thereof either to the commissioner or the county court, in like manner as the commissioner is directed, and thereupon the same mode of proceeding shall be had as if the commissioner gave the information, and the person informing shall be entitled to and receive one half of the fine imposed on the offender or offenders, to his own use, and the other half, after paying costs, to be applied towards lessening the county levy. The clerk or commissioners failing to perform any one of the duties imposed on them respectively by this act, shall be subject to a fine of fifty pounds, to be recovered on the motion of the auditor, in any court of record, notice of such motion having been previously given in the same manner as to delinquent sheriffs. / Provided, That no tax shall be paid for any lot in a town established by law.

I. YEAR OF THE COMMONWEALTH.

69

SEC. 11. A list of all the insolvents, and of the land on which no property can be found, being returned by the sheriff on oath to the court, shall be transmitted by the clerk to the commissioners of the tax, to be entered on their books of taxes for that year ; and no sheriff shall have credit for such insolvents, in his account with the public, unless certified by the said commissioners to have been allowed by the court, and unless it also be accompanied by an account sworn to by the sheriff before the court, of all sums received by him for taxes from persons who have failed to give in their lists, or who have concealed and not given in any part of their property in such lists as they have given in, stating in the said account, the names of the persons from whom he received such sums, and the property on account of which the sums were paid ; and the said commissioners shall moreover transmit with the said lists of insolvents, an account of the tax of any person who may have removed out of the county, together with the name of the county to which they have removed ; which account the auditor is hereby directed to transmit to the commissioners of the tax of the county to which they have removed, to be charged on their books and collected by the sheriff ; an account of all fines or additional taxes imposed by virtue of this act, shall be by the said commissioners transmitted to the auditor before the last day of November annually ; and the said commissioners shall state in their books of taxes a general account with the sheriff of all taxes, fines and additional taxes in their county, crediting him for all insolvents, and for the allowance made to the commissioners for their salaries ; which allowances to the commissioners the sheriff shall have credit for in his account with the public, and also for all payments made by the said sheriff to the public ; receipts for which shall be by the said sheriff transmitted to the commissioners within twenty days after obtaining the same ; a copy of which account shall be by the said commissioners transmitted to the auditor before the first day of August annually.

1792.

Insolvent's list.

SEC. 12. The sheriff of each county shall from and after the first day of December annually, collect and receive from all and every person and persons charged therewith, the taxes imposed by this act in his said county, and in case payment be not made or received on or

Sheriff when to collect.

1792.

May distrain.

Proviso.

Sheriff, when
to pay.Penalty for fail-
ure.

To give bond.

before the 1st of April annually, the said sheriff shall have power to distrain the slaves, goods, or chattels which shall be found on the lands or in the possession of the person so indebted or failing ; notwithstanding such slaves, goods, or chattels shall be comprised in any deed or mortgage ; and if the owner thereof shall not pay the taxes due within five days after such distress, such sheriff shall and may lawfully sell the same, or so much thereof, as shall be sufficient to discharge the said taxes, and the charges of distress and sale, for ready money : *Provided always* : That when unreasonable seizures or distress shall be made, the party grieved shall have an action against the sheriff, and shall recover full costs where any damages shall begin. The sheriff shall duly account for and pay into the treasury of the commonwealth, on or before the first day of August annually, the full amount of all taxes imposed in his said county, deducting therefrom such allowances as this act directs to be made, and six per centum for his commissions thereon ; and in case the said sheriff shall fail to account for and pay into the treasury as aforesaid, the amount of the taxes to be collected by him under this act, every such delinquent sheriff shall be liable to a judgment against him on motion to be made by the auditor, in any court of record within this state (provided he has ten days notice of the day on which the motion is to be made) for the amount of the taxes due, and fifteen per centum damages, together with an interest at five per centum on the whole amount until paid, and the costs of the motion including any expences that may have been incurred in giving the said notice, for the use of the commonwealth, and thereupon execution shall issue accordingly. The said taxes shall be paid in Spanish milled dollars, at the rate of six shillings each, or in other current silver or gold coin at a proportionate value.

SEC. 13. The sheriff of each county shall, before he receives the lists above directed from the commissioners or makes any collection under this act, enter into bond with at least two sufficient securities in the penalty of ten thousand pounds, payable to the governor for the time being, conditioned for the due and faithful paying and accounting for all the taxes imposed by this act, which ought to be collected and accounted for by him during his continuing to act as sheriff ; which bond shall

be recorded in the court of the county. If upon an execution being issued against any sheriff in the manner above directed, it shall be returned that there were no effects or not a sufficiency thereof to levy the whole of the said execution, the securities shall be liable to a judgment against them, on motion to be made by the auditor in any court of record within this state, for the sum which shall appear to remain due on the said execution, together with the costs of the motion as directed in case of judgments against the sheriff, provided that ten days previous notice of the day on which such motion is to be made, be given to said securities; and the said bond shall not be void on the first recovery, but may be moved on from time to time until the whole sum of the penalty of such bond shall be recovered thereon; and on any motion to be made on such bond, an attested copy thereof shall be admitted in evidence. And if the sheriff of any county shall neglect or refuse to give such bond, a collector of the taxes shall be appointed for that county, who shall continue to act as such during the term that the sheriff so neglecting or refusing to give bond, had to serve as sheriff; and the said collector shall give such bond, perform such duties, be entitled to such emoluments, subject to such penalties and be liable to have such proceedings carried on against him and his securities, as is above directed in case of sheriffs.

1792.

On failure, a collector to be appointed.

SEC. 14 It shall be the duty of all owners and proprietors of lands within this state, whether they claim the same by patent or by entry only, to give in to the commissioners of the district in which such land is situate, an account of the quantity of land which he holds in such district, and the commissioner shall enter the same in his list as before directed; and all lands of which a list shall not be given in by the owner or proprietor to a commissioner on or before the fourth day of February which shall be in the year of our Lord, one thousand seven hundred and ninety-five, and on which the taxes that may become due with interest thereon, shall not be paid by such owner or proprietor on or before the said fourth day of February, shall be considered as, and actually be forfeited to the state, and shall be disposed of in such manner as shall be directed by law. But when the owner or proprietor of any such land shall be an infant, feme covert, or non compos mentis, on the said fourth day of

Owners of land to give a list.

1792.

February, he or she shall have the further time of two years after such disability shall be removed, to enter such list with the commissioners and to pay the tax due thereon in the manner above directed.

Distress not to be made prior to the 4th of February.

SEC. 15. No distress shall be made for the land tax prior to the said fourth day of February, except on the slaves, goods or chattels which may be found on the land for which such tax is due, in the possession of the owner or proprietor thereof, or of some person claiming under him. But the whole amount of the tax which may become due on any one tract of land, whether the same be held by patent or by entry only, prior to an actual and bona fide sale of the said land, may be levied by distress on the slaves, goods and chattels which may be found on any part of the said land in the possession of the owner or proprietor thereof, or of any person claiming under him. *Provided nevertheless*, That no purchaser shall be subject to the payment of any taxes that may be due, except for that part which he may have purchased: and the state shall have a perpetual lien on every tract of land within this state and every part thereof for all taxes which may be due thereon as aforesaid, prior to an actual transfer of the said land. And all tenants who shall be obliged under this act to pay the taxes due on any land leased by them prior to their interest in the same, or who shall be obliged to pay taxes on a greater part of such land than they hold under such lease, shall have a right to demand and receive the amount of such taxes so paid by them from the original owner and proprietor of such land, and shall have a lien on the land for which the taxes were so paid, until they be repaid the amount thereof. *Provided*, That nothing herein contained shall effect any special contract entered into between such original owner and proprietor or tenant concerning the payment of the taxes which shall be due on such land. Every person who shall pay the taxes due on any land, and who shall afterwards be evicted from the same, shall have a lien on the land for the taxes so paid by him and interest thereon, and shall have a right to retain possession of the said land until the person recovering it from him shall pay or tender him the amount thereof, unless the person so recovering the land, shall also have paid the taxes due thereon, in which case, the person so evicted and having paid the taxes, shall receive the amount thereof with in-

Persons having paid taxes shall hold a lien.

terest thereon from the public treasury. And in all cases where it shall appear that two or more persons have paid the taxes due on the same tract of land, the taxes so paid together with the interest thereon, shall be refunded to all such persons except him in whom the legal title shall be established.

1792.

SEC. 16. There shall also be paid the following taxes, to wit: on each original writ or subpœna issued from the court of appeals, the sum of six shillings; on each original writ or subpœna in chancery, issued from any other court, three shillings; on each appeal to the court of appeals, twelve shillings; on each writ of error, supersedeas and certiorari issued from the court of appeals, six shillings; on each final judgment or decree in the court of appeals concerning lands or slaves, six shillings; on every other final judgment or decree in the court of appeals, six shillings; on each final judgment or decree in any other court concerning lands or slaves, three shillings; on every other final judgement or decree in any other court, three shillings; on each deed recorded concerning any improved lot or lots in any town, for each lot three shillings; for each deed recorded concerning any unimproved lot or lots in any town, three shillings; on each deed recorded concerning other lands, three shillings; on the seal of any court, three shillings; on the seal of the commonwealth, six shillings; which several sums shall be paid to the clerk of the respective courts from whence such process shall issue, or judgments or decree shall be entered, or where such deeds shall be recorded or other proceedings had; and the said clerks shall be allowed for collecting, accounting for and paying the said taxes imposed by this act into the treasury of the commonwealth, the sum of five per centum on the money so collected by them, or any of them; and they are hereby required to account for and pay into the treasury aforesaid, every half year, to wit: on the tenth day of June and the tenth day of December in every year, or within ten days afterwards, all the money received by them respectively on public account pursuant to this act; and that the amount of the said taxes may be justly ascertained, the said clerks shall make out a fair account half yearly, prior to the said tenth day of June and tenth day of December, of all sums received by them in pursuance to this act, which account the clerk

Taxes on law
process, &c.

Compensation
to clerks.

1792.

Penalty.

Treasurer to
borrow 2000l.Warrants re-
ceivable for
taxes.

shall deliver into one of the commissioners for his county on oath, and the commissioner having compared the said account with the proper books in the clerk's office, shall certify the same to the auditor, who shall thereupon settle with such clerk agreeably to such account. Every clerk failing to render such account, or failing to pay into the treasury the sum which he shall thereby appear to be indebted to the state by such account, shall for every such offence forfeit and pay the sum of one hundred pounds, to be recovered by motion of the auditor in the same manner that is hereby directed to be used against delinquent sheriffs.

SEC. 17. *And be it further enacted*, That the treasurer is hereby authorised and required as soon as may be to borrow any sum of money not exceeding two thousand pounds at five per centum per annum; which shall be applied to paying the wages of the members and clerk of the late convention, and of the legislature, chaplain, clerks, sergeants-at-arms, door-keepers, and other contingent expences that may be incurred previous to the collection of the taxes.

SEC. 18. That civil list warrants or certificates from the auditor shall be receivable in payment of all public taxes.

SEC. 19. Form of the return of taxable property to be made by the commissioners.

List of taxable property within the district of A. B. commissioner in the county of C for the year 1792.

Date of receiving list.	Persons names chargeable with the taxes.	Number of white males above 21	Number of white males above 16 and under 21.	Total blacks	Blacks under 16.	Horses, mares, colts, & mules	Cattle.	Coach and Chariot wheels.	Other carriages with 4 wheels.	Carriages with two wheels.	Ordinary licences.	Billiard tables.	Retail stores.	Acres of land.	Stud horses and rate of covering per season.
1792 July 10	AC AD	1	2	3	4	6	9	4	12	6	18	1	1	100	1
		2	1	2	1	8	10	4	8	8	3	2	1	200	1
		4	10	15	9	10	4	8	8	3	3	1	1	300	1
		3	5	10	10	1	2				4			400	1
Total amount		10	28	31	26	14	19	8	20	14	21	10	2	1000	4

I. YEAR OF THE COMMONWEALTH.

75

SEC. 20. So much of every act of assembly as directs any tax to be collected within this state in the year 1792, and so much of all and every other act or acts as comes within the purview of this act shall be and the same is hereby repealed.

1792.

Repealing
clause.

SEC. 18. This act shall commence and be in force on the first day of July in the present year.

Commence-
ment.

CHAPTER XI.

An act for establishing a Land Office,

Approved, June 27th, 1792.

This act was amended by an act passed at the November session following, (Chap. 74) and re-enacted and enlarged by an act passed the January session of 1798, (Vol. II Chap. 62.)

SEC. 1. *Be it enacted by the General Assembly, That a* land-office shall be and the same is hereby constituted for the purposes hereinafter mentioned, a register of the said office shall be appointed, who shall give bond with sufficient security to the governor of this commonwealth in the penalty of five thousand pounds current money; shall hold his office during good behaviour, and be entitled to receive the same fees as has heretofore been received under the laws of Virginia; if any vacancy shall happen by the death, resignation or removal of a register during the recess of the general assembly, the governor may appoint some other person, giving bond and security in like manner to act as register of the said office: *Provided*, that the said register furnish books and other necessary appendages to his office.

Land office
constituted.

A register to be
appointed.
To give bond.

To furnish
books, &c.

SEC. 2. *Be it further enacted, That all records (or copies thereof as the case may be) of patents or grants for lands heretofore issued, with all papers and documents relating thereto, and certificates of surveys of lands now in the Virginia register's office and not patented, shall when obtained, be removed and lodged in the said office for their safe keeping; and all future grants of lands shall issue from the said office in the manner and form heretofore issued from the register's office of Virginia, all certificates of surveys which have been or hereafter may be made and recorded in the surveyor's office, shall be returned to the said register's office, in order that grants may issue thereon in like manner as heretofore*

Certificates of
survey records,
&c. to be re-
moved therein

1792

Commence-
ment.

directed. And the said office shall be kept where the general assembly hold their session.

SEC. 3. This act shall commence and be in force from the passage thereof.

CHAPTER XII.

An ACT to ratify certain articles in addition to and amendment of the constitution of the United States of America, proposed by Congress to the Legislatures of the several states.

Approved, June 27th, 1792.

Another amendment was ratified in 1803, (Vol. III. Chap. 118.)

Preamble.

SECTION 1. WHEREAS it is provided by the fifth article of the constitution of the United States of America, that congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to the said constitution, which shall be valid to all intents and purposes as part of said constitution, when ratified by the legislatures of three-fourths of the several states.

And whereas at a session of the congress of the United States, begun and held at the city of New-York, on the fourth day of March, in the year one thousand seven hundred and eighty-nine, it was resolved by the senate and house of representatives in congress assembled, two thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states, all or any of which articles, when ratified as aforesaid to be valid to all intents and purposes as part of the said constitution, to wit:

ARTICLE I. After the first enumeration, required by the first article of the constitution, there shall be one representative for every thirty thousand, until the number shall amount to one hundred; after which the proportion shall be so regulated by congress that there shall be not less than one hundred representatives, nor less than one representative for every forty thousand persons, until the number of representatives shall amount to two hundred; after which the proportion shall be so regulated by congress that there shall not be less than two hundred representatives, nor more than one representative for every fifty thousand persons.

ART. II. No law, varying the compensation for the services of the senators and representatives, shall take ef-

I. YEAR OF THE COMMONWEALTH.

77

fect, until an election of representatives shall have intervened.

1792.

ART. III. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. IV. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ART. V. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ART. VI. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

ART. VII. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law ; nor shall private property be taken for public use without just compensation.

ART. VIII. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law ; and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

ART. IX. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of

1792.

trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ART. X. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. XI. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ART. XII. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Ratification.

SEC. 3. *Be it therefore enacted by the general assembly,* That the aforesaid articles and each of them be, and they are hereby confirmed and ratified.

CHAPTER XIII.

An ACT concerning the Treasurer.

Approved June 27th, 1792.

Re-enacted and enlarged at the January session of 1798, (Vol. II. Chap. 65.)

Treasurer: to
give bond.

Condition.

Auditor may
move on said
bond.

SECTION 1. *BE it enacted by the General Assembly,* That the treasurer for the time being shall not be capable of executing the said office until he hath given bond, with such security as shall be approved by the governor with the consent of the senate, in the sum of one hundred thousand pounds, payable to the governor and his successors, in trust for the use of the commonwealth, and conditioned for the faithful accounting for and paying all such sums of money as shall be received by him from time to time by virtue of any act of assembly, to be recovered upon the breach thereof on motion by the auditor in any court of record for public use: *Provided,* ten days previous notice be given in writing of such motion; and moreover the said treasurer before he enters into his said office shall take the following oath before the governor, to be administered by the secretary of state: "I, A. B. do swear that I will faithfully and truly execute the office of treasurer in all things relating to said office to the best of my skill and judgment according to law, so help me God."

SEC. 2. And the said treasurer is hereby authorised, 1792.
 empowered and required to demand and receive of the
 several collectors of the public revenue, all taxes arising ^{His duty.}
 on lands or other property and all other public money
 payable into the treasury by virtue of any act or acts of
 assembly, and shall apply and pay the same for such uses
 only as shall be from time to time directed by law.

SEC. 3. And it shall not be lawful for the treasurer to
 pay or receive any money on account of the public, but on
 warrant or certificate from the auditor, save only the sa-
 lary of said auditor, together with the accounts for the
 expences of his office for blank books, paper, presses for
 the preservation of his books and papers ; and other im-
 plements necessary for the use of his office ; which shall
 be examined and certified for payment to the treasurer
 by the governor.

SEC. 4. And the said treasurer shall keep in a book
 or books to be provided for that purpose at the public
 charge, true, faithful and just accounts of all the money
 received by him from time to time, on the respective
 taxes and impositions by virtue of any act or acts of as-
 sembly, and also of all such sum or sums of money as he
 shall pay out of the treasury pursuant to such act or acts,
 which accounts shall be so kept, as that the nett produce
 of the several and respective taxes and impositions, and
 the money paid out of the treasury for every particular
 service, may appear separate and distinct from each
 other.

SEC. 5. And there shall be a committee appointed by
 the general assembly annually, to examine into the state
 of the treasury, and the said treasurer is hereby requir- <sup>Committee to
 examine state of
 the treasury an-
 nually.</sup>
 ed to lay before the said committee, all the accounts and
 vouchers of the treasury for money received or paid out
 for whatever purpose, and produce the money in his
 hands ; and such committee shall make a fair statement
 of all monies received and paid out of the treasury and
 for what purposes ; and of the money that shall be in
 hands, and report the same to the assembly, who shall
 cause the same to be published : and if the said commit- <sup>Their report to
 be published.</sup>
 tee shall discover that any sum or sums of money paid
 into the treasury, upon taxes or impositions as aforesaid,
 have been diverted to any use or uses contrary to the
 direction of the act or acts of assembly, the said commit-
 tee shall certify the same to the general assembly.

1792.

Penalty on treasurer for misapplying public money.

SEC. 6. And if the said treasurer shall divert or misapply any part of the money paid into the treasury for public use, contrary to the directions of any act or acts of assembly by virtue of which the same was raised or appropriated, the said treasurer for such offence shall forfeit his office, and be incapable of holding any office of trust or profit whatever under this state, and moreover shall be liable to pay double the value of any sum or sums so misapplied; to be recovered for the public use, by motion of the auditor in any court of record, provided ten days previous notice be given in writing, of such motion to the said treasurer so offending.

Office &c. provided at public expence.

SEC. 7. *And be it further enacted*, That there be provided for the treasurer an office at the place where the legislature shall hold their sessions, also a good wooden chest until an iron one can be procured, for the purpose of holding the public money, and presses for the preservation of his books and papers, and other implements necessary for the use of his office, at the expence of the public.

SEC. 8. And when it shall be deemed necessary there shall be a clerk allowed the treasurer who shall give bond and security for the faithful performance of his office, payable to the treasurer and his successors, and the said clerk shall be amenable to the treasurer for his conduct, and the said treasurer to the governor and his successors, and the said clerk shall have a salary allowed him in proportion to his services.

Commencement.

SEC. 9. This act shall commence and be in force from the twenty-fifth day of June in the present year.

CHAPTER XIV.

An ACT for the appointment of Electors to choose a President and Vice-President of the United States.

Approved, June 28, 1792.

The subject of this act was embraced in the great election act of January session, 1798, and in the act of 1799. In 1803 a new law was passed on this subject, which was temporary, and has had its effect—in 1807 another act was passed, (Vol. III. Chap. 528.) All these acts except the one last mentioned, must be considered as obsolete.

CHAPTER XV.

Logan county formed.

An ACT for dividing the county of Lincoln.

Approved, June 28, 1792.

The first section describes the boundary, for which see Chap. 295 of this volume. The remaining sections were temporary, and have had their effect.

I. YEAR OF THE COMMONWEALTH.

81

CHAPTER XVI.

1792.

An ACT concerning Sheriffs.

Approved, June 28, 1792.

With this act we must take into consideration one passed at the November session following regulating their fees, (Chap. 71)—one passed in 1794, (Chap. 163) and one passed in 1795, (Chap. 193) the latter disqualifying sheriffs from holding a seat in either branch of the legislature for a limited time—an act to reduce into one the several acts concerning sheriffs passed in 1796, (Chap. 280)—an act concerning sheriffs and arrearages of taxes, passed in 1799, (Vol. II. Chap. 216)—In 1800 the act of 1796 was amended (Vol. II. Chap. 285) and in 1801, (Vol. II. Chap. 353)—at the same session another act was passed concerning justices of the peace, who accept the office of sheriff, (Vol. II. Chap. 355,) and an act regulating the appointment of sheriffs, (Vol. II. Chap. 372)—In 1803 an act was passed concerning sheriffs, (Vol. III. Chap. 114.)

This is the first act passed by the legislature of Kentucky respecting sheriffs, but it contains scarcely any original matter unless a change of penal sums is to be considered as such. A fine for refusing the office was imposed by an act of 1748, which likewise provided for an exoneration from it on taking such oath as is here prescribed. The provisions respecting the bonds will be found in the acts of 1783, 1782, 1781, 1780, 1755 and 1748. The provision in the second section respecting the return of writs is copied from the act of 1748—but that act goes farther and expressly prohibits the sheriff from returning *non est inventus* when the defendant is a known inhabitant of another county; which protects men from being proceeded against by attachment in any county, not their present or last place of residence.

That part of the third section which imposes a fine of forty dollars on undersheriffs for failing to endorse the time of execution is taken from an act of 1763. The reason there assigned for requiring it is “to prevent disputes between sheriffs and their deputies.” The requisition of endorsing the time of service is omitted in every act subsequent to this, but it has certainly never been repealed. The remaining part of this section is copied from the act of 1748.

The 8th section is partly original, partly copied from an act of 1764, and partly from an act of 1748. The last mentioned act provides that process for treason, felony, riot, or breach of the peace may be executed at any time or place.

The 10th section is copied from an act of 1763. The 12th section contains a provision which will not be found in any subsequent act. *Vide* the prelection to the act of 1796, (Chap. 280. seq.)

SEC. 1. *BE it enacted by the general assembly, That if any county shall neglect to elect a person to fill the office of sheriff, or if the person elected shall die, or the said office become vacant by any other means within the time pointed out by the constitution, the governor or commander in chief shall by and with the advice and consent of the senate during their session, or in the recess agreeable to the constitution, appoint some other qualified person to fill up the vacancy. And where any new county shall have been or may hereafter be laid off after the general elections for sheriffs and coroners shall have taken place, the governor shall by and with the advice*

Governor to fill vacancies.

JUNE SESSION,

1792.

Penalty on the
sheriff refusing to
act.

Proviso.

Bond to be gi-
ven by sheriff.

Remedy for
persons injured
by sheriff.

Bond not be
void on the first
recovery.

and consent of the senate during their session, appoint some qualified person to act as sheriff and coroner in said county or counties until the next election. Every person so elected or appointed sheriff, and refusing to accept and execute the office, shall forfeit sixty dollars to the use of the county towards lessening the levy, for which penalty, judgment may be entered by the court on the refusal of the person (to accept) being made in court, otherwise the same may be recovered by information exhibited against the person refusing, and on his conviction as in other cases : But if the person refusing shall make oath in court "that he hath used his best endeavors, truly and bona fide without covin or collusion, to get security for performing the said office and cannot obtain such security," he shall thereupon be exempted from the penalty, and a new commission shall be issued, as in case of vacancy by death. Every person accepting a sheriff's commission shall, in his county court enter into two bonds with good and sufficient securities, one in the penalty of three thousand dollars, with the following condition, to wit : "The condition of the above obligation is such, that if the above bound A. B. as sheriff of the county of _____ shall by himself or his deputies well and truly collect all officers fees and dues, put into his or their hands to collect, and account for, and pay the same at such time, and in such manner as is directed by law, shall also well and truly execute and due return make of all process and precepts, to him directed, and to him or them delivered and pay and satisfy all sums of money or tobacco, by him or them received, or which ought to have been received, upon any such process or precept, to the person or persons entitled thereto ; and in all other things shall truly and faithfully execute and perform the said office of sheriff according to law, during the time of his continuance therein ; then the above obligation to be void, otherwise to remain in full force ;" which bond shall be payable to the governor for the time being and his successors, and in his name, or that of his successor, any person injured by a breach of the condition, may at his costs prosecute a suit thereon, and recover damages, and be liable to pay costs to the defendant if a verdict or judgment pass in his favor, or the suit be discontinued, and such bond shall not become void upon the first recovery or dismissal of a first or

or other suit, but may be put in suit from time to time by, and at the costs of any other person injured, until the whole penalty be recovered in such damages. The other bond shall also be payable to the governor and his successors in such penalty as the court shall direct, at least double the amount of the taxes to be levied in such county for that year ; and with the following condition, to wit : " The condition of the above obligation is such that if the above bound sheriff of the county of _____ shall by himself or deputies, well and truly collect all taxes and duties directed by law to be collected in the said county during the time of his continuance in office, also all fines, amercements and penalties, which he shall be authorised to collect and account for, and pay the same in to the public treasurer and other persons entitled thereto, at such time and in such manner, as is directed by law, then the above obligation to be void, otherwise to remain in full force" —for breach of the condition of which bond, at the instance and costs, and for the benefit of any person injured thereby a suit may be commenced and prosecuted in the same manner and subject to the same regulations as the action on the first mentioned bond : or the public treasurer or any other public or county creditor, upon the second bond or any officer upon the other bond may by motion to the court of oyer and terminer, or county court, against the obligors, giving them ten days notice of such motion recover judgment for all money and tobacco collected by such sheriff or his deputies and accounted for to the person or persons respectively entitled to receive them.

1792.

Second bond
for the due collection of taxes.

Condition.

Remedy for
persons injured.

For public treasurer, &c.

Notice to be
given.

Assurance of fidelity.

Oath.

SEC. 2. Every person before he enters upon his office of sheriff or under sheriff, shall in open court give assurance of fidelity to the commonwealth in the form prescribed by the constitution, and also take the following oath of office, to wit, " I A. B. do swear (or affirm as the case may be) that I will do right as well to poor as rich, in all things belonging to my office of sheriff ; that I will do no wrong to any man for any gift, reward or promise, nor for favor, or hatred ; that I will make due pannels of persons able and sufficient, and not suspected or procured, and that in all other things I will faithfully and impartially execute the duties of my said office, according to the best of my skill and power, so help me

1792.

Return when
defendant is not
found.

When defen-
dant is an inha-
bitant of ano-
ther county

In what case
process to abate.

Penalty on un-
der sheriff

How recovera-
ble.

What process
to be execute
on Sunday.

Contracts be-
tween sheriff
and persons in
custody.

Allowance for
collecting.

What goods
distrainable for
taxes and when.

Slaves not to be
seized in any
case when o-
ther goods may
be had.

Unreasonable
distress prohi-
bited.

Sheriffs may
distrain for ar-

God." No sheriff shall return upon any writ to him di-
rected, that the defendant is not found within his baili-
wick, unless such sheriff or his deputy shall have been
actually at the place of residence of such defendant, and
not finding him shall have left a true copy of the pro-
cess, or unless such defendant's place of residence is un-
known to such sheriff or officer. If the defendant can-
not be arrested by the sheriff, and shall be a known in-
habitant of another county, the sheriff shall return the
truth of the case ; and thereupon the process as to such
defendant shall abate.

SEC. 3. When any under sheriff shall have served any
writ of execution, or other process, he shall endorse
thereon the time of service, and subscribe as well his own
name as that of his principal, to his return thereof under
pain of forfeiting forty dollars, one half to the common-
wealth and the other to the informer, to be recovered
with costs, by action of debt or information, in any court
of record. It shall not be lawful for the sheriff or any
other officer to execute any writ, or other process upon
Sunday unless it be for treason, felony or breach of the
peace, or to retake a prisoner escaped. Every contract
made between a sheriff and any person in his custody,
except such as the law prescribes, and except bonds made
for the repayment of money or tobacco, actually advan-
ced by the former to discharge the other from imprison-
ment shall be void.

SEC. 4. Every sheriff for collecting the public and
county levies and paying the same, shall be allowed six
per centum.

SEC. 5. If any person indebted for taxes or levies shall
fail to pay the same by the time limited by law, the she-
riff or collector may distrain any goods which shall be
found on the lands whereon the debtor lives and in his
possession, notwithstanding such goods may be comprised
in any deed of mortgage ; and if the taxes or levies
be not paid, may proceed to the sale thereof as in other
cases of distress, but such sheriff or collector, shall not
seize slaves on that or any other occasion, where other
goods sufficient may be had, nor make any unreasonable
distress, on pain of answering damages to the party ag-
grieved, and full costs.

SEC. 6. The sheriff shall have power to collect or dis-
train for any arrears of taxes, levies or officers fees, which

may remain uncollected by his predecessor, at the time of his death or removal from office ; and shall account for the same in like manner, as for other collections, and be subject to the like remedy on his failing to account for and pay the same. 1792.

years of taxes
uncollected by
his predecessors,

SEC. 7. Every sheriff or collector shall deliver to the person from whom taxes, levies or fees are demanded, or his agent, if present, an account, stating distinctly, every article of the demand, and offer to give a receipt for the same, and shall have no power to make distress before such account and receipt shall have been tendered, where the debtor or his agent shall reside in the county unless he abscond.

What to do be-
fore distress
shall be made

SEC. 8. If any person committed to jail shall thence escape, on affidavit or proof thereof by the sheriff or jailor, any justice of the peace, if the escape were from a county jail, or if from the public jail, any judge of the court by whose authority he was committed, shall and may issue as many warrants as are thought necessary under his hand and seal, directed to all sheriffs and constables in the commonwealth, reciting the cause of the imprisonment and the time of escape, and commanding every of them in their respective counties and precincts, to retake such prisoner, and convey and commit him to the jail of the county wherein such retaking shall be, there to remain until discharged by due course of law ; which warrant every sheriff or constable into whose hands the same shall come, is hereby required to obey : and on the commitment of every such prisoner so retaken, the sheriff or jailor to whom he is committed shall give a receipt for the body, and shall make return thereof upon the warrant to the court, by whose authority the prisoner was committed. And in case the prisoner was charged in execution, the said sheriff or jailor shall keep him in custody without bail or mainprize until he shall have satisfied the debt, or be otherwise discharged by due course of law. If the prisoner shall have been committed for breach of the peace or behaviour ; or shall have escaped before it was determined whether he ought to be tried in the court of oyer and terminer for some crime he had been charged with, or after it was determined that he might be tried for such crime in the county court, the sheriff to whom he shall be committed after he was retaken, shall cause him to be removed to the jail from

Escape warrants
when and by
whom to be is-
sued.

To whom to be
directed.

Substance of
the warrant.

Duty of sheriff
upon retaking
prisoners.

1792.

In what cases
sheriff liable for
an escape.

Any person aid-
ing prisoner to
escape, liable to
the party inju-
red.

Furnishing pri-
soner with in-
struments, &c.
to facilitate his
escape, guilty
of misdemea-
nor.

Sheriff may im-
press a guard.

Delivery of pri-
soner to new
sheriff.

Sheriff or cre-
ditor may pro-
ceed against a
deputy, & how.

whence he escaped; if he escaped after it was determin-
ed that he ought to be tried in the court of oyer and ter-
miner, or being charged with or convicted of any crime,
or escaped from the public jail, then such sheriff shall
cause him to be removed to the public jail—No judg-
ment shall be entered against a sheriff or other officer in
any suit to be brought for or by reason of the escape of
a debtor in his custody, unless the jury who tries the is-
sue, shall expressly find that the prisoner escaped with
the consent or through the negligence of such sheriff, his
deputy or other officer, or that he might have been reta-
ken, but that the sheriff or officer neglected to make im-
mediate pursuit. In case of any such escape neither with
the consent nor through the negligence of the sheriff, the
party at whose suit the prisoner was committed, may,
by action on the case, recover damages against any per-
son or persons by whose aid in any manner he escaped.
Any person furnishing a prisoner with instruments or
arms to facilitate his escape, shall be deemed guilty of a
misdemeanor, although no escape shall actually have
happened. Where the sheriff of any county shall have
cause to suspect, that any person committed to jail, for
treason, felony or other capital crime, will attempt to es-
cape, or that others will endeavor to rescue him, such
sheriff is empowered and required to impress a sufficient
guard, for securing such prisoner so long as he shall con-
tinue in prison, and the expence of such guard shall be
levied by the court on the county and repaid by the pub-
lic.

SEC. 9. When any sheriff shall be removed from of-
fice, an indenture between him and the new sheriff for
delivering over prisoners, or an entry upon the records
of the county court of the names of the several prison-
ers, and causes of their commitment, shall be sufficient
to discharge the old and charge the new sheriff, as to
such prisoners.

SEC. 10. Where any under sheriff hath heretofore so
proceeded or shall hereafter so proceed, upon any writ
of execution, or other process, in the course of the collec-
tion of levies, fees or penalties, or in making other dis-
tresses, as that judgment may by law be thereupon enter-
ed against his principal sheriff upon motion, in every
such case, either the creditor or the sheriff may obtain
judgment against the under sheriff, and his securities, his

I. YEAR OF THE COMMONWEALTH.

87

or her executors or administrators for such default in like manner, upon such notice, and subject to the like execution as such laws direct against the sheriff.

1792.

SEC. 11. And whereas it hath been the too frequent practice of sheriffs in the collection of officers' fees which are charged in tobacco to pay the same instead of money or other valuable consideration which may have been received from the person charged with such fees ;

SEC. 12. *Be it therefore enacted*, That the sheriff shall whenever he tenders such tobacco, make oath before some justice of the peace that the tobacco by him tendered was paid by the person or persons charged with the fee by the officer to whom the same is tendered and that he hath not directly or indirectly procured that tobacco by any other means.

Duty of sheriff respecting the payment of officers fees.

SEC. 13. This act shall commence and be in force from the tenth day of August next.

Commencement.

CHAPTER XVII.

An ACT for regulating the Militia of this Commonwealth.

Approved, June 28, 1792.

This act was repealed the November session following by an act to regulate and discipline the militia ; which act was amended by one passed at the January session, 1798 — At the November session, 1798, an act was passed concerning the militia, which fully repealed all former laws on the subject. This last act was amended by one passed in 1799 ; and both were again amended by one passed in 1800. In 1801 an act was passed to amend and reduce into one the several acts concerning the militia—this again repealed all former laws on the subject—In 1804 a small amendment was made to that act—In 1806 an act was passed concerning the militia, which utterly repealed and annulled all former laws, (Vol. III. Chap. 420)—This act was amended in 1807, (Vol. III. Chap. 523.)

CHAPTER XVIII.

An ACT giving further time to the owners of lots in Bairdstown to improve the same.

Approved, June 28th, 1792.

SECTION 1. WHEREAS, an act for establishing a town in the county of Nelson, passed the second day of December, one thousand seven hundred and eighty-eight, required the owners of lots in the said town to erect certain improvements therein prescribed, within three years from the day of sale, which time is about to

Preamble.

1792. expire, and it is deemed reasonable by the general assembly that a longer term should be given.

Further time
of three years
to improve lots.
Without forfei-
ture.

SEC. 2. *Be it therefore enacted*, That the further time of three years from and after the first day of July next, be allowed to the said owners of lots to erect thereon the improvements and buildings required and directed by the act before recited, without being subject to any forfeiture previous to the expiration of the time given by this act.

Commence-
ment.

SEC. 3. This act shall commence and be in force from and after the first day of July next ensuing.

CHAPTER XIX.

An ACT concerning Strays.

Approved, June 28, 1792.

This act was amended by an act passed in the November session following—In 1794 an act was passed to amend and reduce into one the several acts concerning strays, which repealed all former laws on the subject, (Chap. 164)—In 1795 an act was passed to amend the act last mentioned, (Chap. 191)—At the January session of 1798, an act was passed to reduce into one the several acts concerning strays, (Vol. II. Chap. 47.)

CHAPTER XX.

An ACT to amend and revive an act entitled "an act for better regulating and collecting certain Officers' fees, and for other purposes therein mentioned."

Approved, June 28th, 1792.

Fees, how char-
ged and collec-
ted.

SECTION 1. *BE it enacted by the General Assembly*, That all officers' fees which by the laws now in force, are chargeable and receivable in tobacco, shall in future be charged in money and collected in the currency of this state. And for every pound of tobacco allowed by any existing laws to any officer, witness, or other person, as a compensation for any services, they shall in lieu thereof be entitled to receive one penny current money of Kentucky; that for all fines and forfeitures in tobacco, imposed by any law of Virginia in force in this state, suits may be instituted and recovered in money at the same rate.

Fines, &c. how
recoverable.

Costs to be tax-
ed.

SEC. 2. That all clerks and justices in taxing costs in any judgment and in issuing executions pursuant thereto, shall enter the same in money at the rate herein before

prescribed, except that for recording deeds, the clerks of the several courts shall take and receive the sum of six shillings for every deed which they shall record and no more. 1792.
Fee for recording deed.

SEC. 3. That the clerk of every court shall set up in some public place in his court-house, and also in his office a fair list of clerks' and sheriffs' fees, carry out the amount for every particular service agreeable to this act, and shall keep the same constantly up under the penalty of five pounds for every two days succeeding each other that the same shall not be up in the office, and for every two succeeding courts the same shall not be up in the court-house. Duty of clerk
Penalty on clerk for failure.

SEC. 4. That such part of the act for the better regulating and collecting certain officers' fees, and for other purposes therein mentioned, as is not contrary to this law be revived and continued in force and that such part of any law as is contrary to this act be repealed. Former act revived in part.

SEC. 5. This act shall commence and take effect from and after the first day of July next. Commencement.

CHAPTER XXI.

An ACT concerning the appointment of Commissioners.

Approved, June 28, 1792.

This act is referable to the subject of revenue. *Vide* the prelection to chap. 10, ante.

BE it enacted by the General Assembly, That the commissioners to be appointed in each county to take in the taxable property, pursuant to an act entitled "an act to establish a permanent revenue," shall be appointed by the county courts of each county; any thing in the said recited act to the contrary notwithstanding. Commissioners how appointed.

CHAPTER XXII.

An ACT authorising the Governor to appoint Surveyors to the reserved Military Lands.

Approved, June 28, 1792.

BE it enacted by the General Assembly, That the governor of this commonwealth, be authorised and empowered to continue by commission, the surveyors of the lands reserved for the officers and soldiers of the Virginia

1792

state and continental lines, within the bounds of this state, or in case of their refusal, to appoint such others as to him may seem best.

CHAPTER XXIII.

An ACT establishing County Courts, Courts of Quarter Sessions, and a Court of Oyer and Terminer.

Approved, June 28, 1792.

This act is important as being one of the links by which the legislature have connected the practical jurisprudence of this country with that of Virginia. The provision to that effect which is contained in the last part of the 6th section, is no where else to be found.

This act was amended in the November following, (Chap. 73) and again in 1793, (Chap. 124) and in 1795, (Chap. 221)—In 1795, district courts were established; the jurisdiction of the court of oyer and terminer transferred to them, and so much of every act or acts as establish a court of oyer and terminer repealed. (Chap. 201.)

In the year following, (1796) the subject matter of this act was amplified and disposed of in three laws, viz. an act to reduce into one the several acts establishing county courts and regulating proceedings therein, (Chap. 256) an act to reduce into one the several acts establishing courts of quarter session &c. (Chap. 265) and an act directing the method of proceeding in courts of equity against absent debtors, or other absent defendants, and settling the proceedings in attachments against absconding debtors, (Chap. 281.) However, an important branch of the 7th section which certainly constitutes a distinct species of attachment, was entirely omitted in the act of 1796. That part of the second section which permits sheriffs to execute the judgments of magistrates has never been re-enacted or repealed. The same observation applies to the qualifications (and mode of determining them) of securities on an appeal from the judgment of a magistrate.

The part of this act which relates to attachments is copied nearly *verbatim* from an act of 1748—as much of it as relates to the examination of criminals is transcribed with little variation from an act of 1705, which is an amplification of a statute of Philip and Mary. As much of it as any way relates to grand juries was repealed by an act passed in 1794, (Chap. 157) which repealed all laws and parts of laws on the subject of grand juries. But this last act was expressly repealed by an act of 1796, (Chap. 262.)—A provision respecting appeals to the county court was introduced by a little act passed in 1800, (Vol. II. Chap. 301.)—In 1801 another act was passed, which is connected with the provisions of this act, (Vol. II. Chap. 373)—In 1804, the attachment law was amended, and justices of the peace privileged from serving on juries, (Vol. III. Chap. 253)—In 1806 transient persons, physicians, surgeons and ministers of religious societies were privileged from serving on petit juries, and a right of peremptory challenge to one fourth of the jury introduced, (Vol. III. Chap. 397)—See also an act of 1807, (Vol. III. Chap. 503) as explanatory of the jurisdiction of a single magistrate.

Vide the prælections to chap. 258 and 260 of this volume.

Justices to be appointed in each county. Apportionment

SEC. 1. *BE it enacted by the general assembly, That there shall be justices of the peace appointed in each county within this state in the following proportion, that is to say, for the county of Mason ten, for the county of Bourbon nine, for the county of Fayette twelve, for the*

county of Woodford ten, for the county of Scott nine, for the county of Washington nine, for the county of Madison ten, for the county of Lincoln ten, for the county of Mercer ten, for the county of Nelson sixteen, for the county of Jefferson nine, for the county of Shelby eight, for the county of Logan three ; any two of whom shall constitute a court of quarter sessions, and county courts, and do the whole business as such until otherwise provided by law ; every person so appointed a justice of the peace, shall before he enters on the execution of his office take the oath prescribed by the constitution of this state, and if any person whatsoever shall presume to execute the office of a justice of the peace without first qualifying himself in the manner by this act required, he shall for every such offence, forfeit and pay the sum of fifty pounds, one moiety to the commonwealth and the other to the informer, to be recovered by action of debt in any court of record within this state, which oath may be administered by any one justice of the peace to another, and a certificate of which shall be recorded in the court of the county, to which the justice taking the same shall belong.

SEC. 2. The justices so appointed and each of them shall be conservators of the peace, within their respective counties, and shall have cognizance of all causes of less value than five pounds current money, or one thousand pounds of tobacco ; in which said causes, they may give judgment and thereupon award execution against the goods and chattels of the debtor or party against whom such judgment shall be given, which shall be executed and returned by the sheriff or constable to whom directed, in the same manner as other writs of *fiery facias* are to be executed and returned, but no execution shall be by him granted against the body of the defendant. All judgments given by any such justice or justices when the amount thereof shall not exceed fifty shillings or five hundred pounds of tobacco, shall be final ; in all judgments where the amount thereof shall exceed fifty shillings or five hundred pounds of tobacco, the party against whom such judgment shall be given, shall have a right to appeal from the same to the next court of quarter sessions to be held for the county wherein the judgment was rendered, whereupon the justice or justices who gave such judgment, shall suspend all further proceedings

1792.

To take oaths.

Penalty on justice failing to take oath.

How recovered.

Of what sums have cognizance.

No execution to be issued against the body of defendant.

What judgments final.

What judgments appeal allowed.

1792. thereon, and shall return the papers and the judgment he had given thereon to the clerk of the said court; and the said court shall thereupon at their next session hear and determine the same in a summary way, without pleading in writing according to the right and justice of the case; unless the said court for good cause to them shewn shall continue the same to the next court, beyond which second court such appeal shall in no pretence be continued; and execution may be taken out on a judgment given by the said court on such appeal in the same manner as if the cause had been originally instituted in the said court. In all cases where any party may desire to appeal from the judgment of a justice, pursuant to this act, he shall receive from the justice a copy of the judgment and produce the same to the clerk of quarter sessions, and shall enter into bond in the office of such clerk in a penalty double the sum of said judgment with a security who shall be an inhabitant of said county. The security shall be deemed sufficient if he on oath declares he is an inhabitant and possesses visible personal estate of the value of the penalty of the bond and not otherwise; such bond shall be conditioned for the payment of the debt and costs, in case the judgment shall be confirmed on the trial of the appeal, upon the execution of such bond, the clerk shall certify the same to the magistrate and the constable, enjoining further proceedings, and issue summons to the appellee, to appear at the next court of quarter sessions, noting the day the same shall be set for trial by the clerk. The constable shall summon the appellee, or his agent or attorney, if within the county, which summons shall be executed ten days before the court when the same shall be tried. It shall be the duty of the justice who gave the judgment to lodge with the clerk at or before the next court of quarter sessions any papers produced or read on the trial before him, and if no papers, to certify the same to the clerk, noting therein all the costs. The clerk shall docket the same in order. The court shall proceed at their next court of quarter sessions to hear and determine the appeal in a summary way, and give such judgment as to them shall seem just with respect to the costs as well as the debt; but may grant a continuance if they deem it right to the next term, but not after. The clerk shall receive

To return all papers, &c. to the clerk.
Court to hear it in summary way.
May continue for good cause.
Execution issue as in other cases.
Person appealing to get a copy of proceedings.
To give bond.
Qualification of securities.
Condition of bond.
Clerk to certify bond is taken and issue summons.
Constable to summon appellee.
Justice to lodge all papers, &c. with the clerk.
Clerk to docket appeals.

the same fees for his certificate to the justice as for a summons, and other fees as for similar services. 1792.

SEC. 3. Upon complaint to a justice of the peace that any person indebted to the complainant in any less sum than five pounds current money, or one thousand pounds of tobacco, is removing out of the county privately or so absconds or conceals himself, that a warrant cannot be served upon him, it shall be lawful for such justice taking bond and security, as in this act is hereinafter directed in the case of an attachment returnable to the court of quarter sessions, to grant an attachment against the estate of such debtor, or so much thereof as shall be of value sufficient to satisfy the debt and costs of the party praying such attachment, directed to the sheriff or any constable of his county, and returnable before himself or any justice thereof, who shall and may proceed thereupon, as is hereafter directed, in the case of an attachment, returnable to the court of quarter sessions.

For what sum
justice to grant
attachment.

SEC. 4. In every county of this state, a monthly court shall be held by the justices thereof at the several respective places that have been or may be assigned for that purpose, upon the days which are or may be limited by law for holding courts for each county respectively, and at no other time or place; which courts shall be called county courts, and shall consist of the justices appointed for each county as above directed; any three of them shall be sufficient to hear and determine all causes depending in the said county courts. *Provided nevertheless*, That if the business of any of the said courts cannot be determined on the court-day, the justices may adjourn from day to day, until all causes and controversies then depending before them shall be heard and determined, or otherwise continued until the next court. *Provided also*, That no monthly court shall be held for any county in any month hereinafter directed, for the holding of a court of quarter sessions for the same county.

Monthly courts
to be held in
each county.

May adjourn
from day to day

No monthly
court to be held
in months of
courts of Quar-
ter Sessions.

The county courts shall and may have cognizance and shall have jurisdiction of all cases respecting wills, letters of administration, mills, roads, the appointment of guardians and settling of their accounts and the admitting of deeds and other writings to record, and of all other cases of which the county courts as now constituted have jurisdiction, except in those cases which are

Jurisdiction of
county courts.

JUNE SESSION,

1792.



hereby expressly made cognizable in the courts of quarter session. And such proceedings shall be had on all such cases in the said county courts as are directed by law.

Courts of Quarter Sessions how established.

Months in which courts of Quarter Sessions held.

To hold six judicial days. Justices to be conservators of the peace. Jurisdiction of courts of Quarter Sessions.

SEC. 6. There shall be in every county within this state a court of Quarter Sessions, which shall be so called and shall consist of three justices, to be appointed for that purpose, out of the justices of the peace for that county, any two of them shall be sufficient to constitute a court; they shall meet at the place appointed for holding courts in each county, and on the court day for their respective counties in the months hereafter directed, that is to say, for the county of Mason, in the months of February, April, June and September; for the county of Bourbon, in the months of February, April, June and September; for the county of Fayette, in the months of February, April, June and September; for the county of Woodford, in the months of February, April, June and September; for the county of Madison, in the months of February, April, June and September; for the county of Lincoln, in the months of February, April, June and September; for the county of Mercer, in the months of February, April, June and September; for the county of Nelson, in the months of February, April, June and September; for the county of Jefferson, in the months of February, April, June and September; for the county of Washington, in the months of February, April, June and September; for the county of Scott, in the months of February, April, June and September; for the county of Shelby, in the months of February, April, June and September; and for the county of Logan, in the months February, April, June and September. They shall sit six judicial days, unless the business before them be determined sooner. They shall be conservators of the peace in their respective counties, and shall and may take cognizance of, and are hereby declared to have power, authority and jurisdiction to hear and determine all causes whatsoever, at the common law or in chancery within their respective counties, except such criminal causes where the judgment upon conviction shall be for the loss of life or member, in which causes they shall have no jurisdiction except as is hereafter expressly directed, and except also all causes of less value than five pounds or one thousand pounds of tobacco.

The said court shall have jurisdiction of all matter respecting escheats and forfeitures arising within their respective counties, and in those cases escheaters returns shall be made thereto, and other proceedings had therein according to law. The said courts shall have power to award writs of *ne exeat*, injunctions and *habeas corpus*, and any justice thereof or any justice of the peace may take recognizance of special bail in any suit depending in any of the said courts and grand juries shall be summoned, impannelled and charged as heretofore in the county courts. The said courts shall be attended and obeyed by the same officers and the same mode of proceedings shall be had therein as is by law now directed to be observed in conducting of similar business in the county courts or the supreme court for the district of Kentucky, as the case may be; all actions, suits and other matters now depending in the supreme court for the district of Kentucky, which by this act are made cognizable in the said courts of quarter sessions, shall be transferred to the dockets of such courts, to be proceeded on in the same manner as if they had originated therein, in the following manner, that is to say, where the defendant has a known place of residence, the cause shall be sent to the court of the county in which he resides; where the defendant has no known place of residence the cause shall be sent to the court of the county in which the writ or subpoena was served, or where the writ or subpoena has not been served in the county to which it was first directed; and the judgment and decree of the said courts when rendered, shall be final in all cases except those in which the court of appeals shall by law have a controlling power over the said courts. All officers of the said courts shall have the same powers, perform the same duties, and be entitled to the same fees as are now by law given to, required of, or payable to the officers of the county courts; and in all cases not hereby particularly provided for, the said courts, shall be governed by the laws now in force, respecting the county courts. The said courts shall be courts of record and shall have power to administer all necessary oaths or affirmations and to punish by fine and imprisonment all contempts of their authority in any cause or examination before the said courts.

1792.

When justice to take recognizance of special bail. Grand juries summoned.

Mode of proceeding.

Actions in supreme court where removed. In what manner to be transferred.

What judgments final.

Power of officers.

Court of Quarter Sessions how governed.

SEC. 7. Where a debtor is removing out of a county

1792.

What case justice to grant attachment.

Provido.

What person charged with a crime examined by a justice of Quarter Sessions

Duty of justice.

Prisoner may be sent to court of oyer and terminer or tried in court of quarter sessions

Court to take depositions.

privately, or absconds and conceals himself, so that the ordinary process of law cannot be served on him, or where the creditor makes oath that he hath grounds to suspect, and verily believes that his debtor intends to remove his effects privately, it shall be lawful for any justice of any the said courts to issue an attachment returnable to his court in the same manner, and on the same terms that attachments are now directed to be issued by justices of the peace, returnable to the county courts; and thereupon the same proceedings shall be had, as are directed by law in such cases. *Provided*, That no attachment shall be issued by any justice of any of the said courts, unless where the debt or demand shall be of the value of at least five pounds or one thousand weight of tobacco.

SEC. 8. Where any person not being a slave shall be charged on oath before a judge of any court of quarter sessions, with any criminal offence which in the opinion of such justice ought to be examined into by the court of quarter sessions, the said justice shall take the recognizance of all material witnesses to appear before such court, and immediately by his warrant commit the person so charged to the county jail, and moreover shall issue his warrant to the sheriff of the county, requiring him to summon the justices of the said court, to meet at the court house of the county, on a certain day, not less than five, or more than ten days after the date thereof, to hold a court for the examination of the fact: which court shall consider whether as the case may appear to them, the prisoner may be discharged from further prosecution, may be tried in the court of quarter sessions, or must be tried by the court of oyer and terminer, and if they shall be of opinion that the fact may be tried in the court of quarter sessions, the prisoner shall be bound over to the next court of quarter sessions to be held for that county for trial, or upon refusing to give sufficient bail, shall be remanded to the county jail, there to remain until such court, or until he or she shall be bailed; but if they shall be of opinion, that the prisoner ought to be tried in the court of oyer and terminer, they shall take the depositions of the witnesses, and bind such as they shall think proper by recognizance to appear and give evidence against such criminal at his trial: and shall remand the prisoner to jail, and direct the sheriff to re-

move him to the jail in the town of Lexington, which until otherwise directed by law, shall be considered as the public jail, there to be safely kept until he or she be discharged by due course of law ; by virtue of which order, the sheriff, as soon as may be, shall remove the prisoner and deliver him or her with a copy of the said order to the keeper of the said jail, who shall receive and safely keep him or her accordingly. And for enabling the sheriff safely to convey and deliver such prisoner, the said court by their order, shall empower him as well within his county as without, to impress such and so many men, horses, and boats, as shall be necessary for the guard and safe conveyance of the prisoner, having previously had the property so impressed valued by two indifferent persons on oath ; and all persons are to pay due obedience to such warrant. And the clerk of the court shall within ten days after such examination, transmit a copy of the proceedings, depositions and recognizances to the clerk of the court of oyer and terminer, under the penalty of twenty pounds for each offence ; to be recovered by motion in the name of the auditor, in any court of record within this commonwealth, provided the said clerk have ten days previous notice of such motion. *Provided*, That if such prisoner shall in the opinion of the court be bailable by law, he or she shall not be removed in ten days after the said court, but shall and may be admitted to bail before any justice of the same court within that time, or at any time afterwards, before any judge of the court of oyer and terminer.

SEC. 9. When any person shall be so removed to be tried for treason or felony the clerk of the court of quarter sessions shall immediately after the court held for his or her examination, issue a writ of *venire facias* to the sheriff of the county, commanding him to summon twelve good and lawful men, being freeholders of the county residing as near as may be to the place where the fact is alledged to have been committed, to come before the court of oyer and terminer, on the first day of its next session, and return a pannel of their names to the clerk of the said court of oyer and terminer ; which freeholders, or so many of them as shall appear, not being challenged, together with so many other good and lawful freeholders of the by-standers as will make up the number twelve, shall be a lawful jury for the trial of such pri-

1792.

Prisoner sent to
Lexington jail.Prisoner how
removed.Sheriff to im-
press guard.Clerk to trans-
mit a copy of
proceedings.Penalty on his
failure.
How recovered.

Provide.

Clerk of quar-
ter sessions to
issue *venire fa-
cias*.Sheriff to return
pannell to clerk
of oyer and ter-
miner.Deficiency how
made up.

1792.	soner. Every <i>venire</i> man and witnesses summoned and attending the court of oyer and terminer, shall have an allowance of two pence per mile for travelling to and returning from the said court, and of five shillings for each day he shall attend on the same. If any person summoned as a <i>venire</i> man or a witness, shall fail to attend accordingly, not having a reasonable excuse to be made at the time he should have appeared, or at the next court of oyer and terminer, they may fine every such person in a sum not exceeding five pounds, for the use of the commonwealth.
Allowance to <i>venire</i> men.	
Penalty on failing to attend.	
Witnesses to be summoned for prisoner. Who to issue subpoena. Allowance to witnesses.	SEC. 10. If a prisoner shall desire any witnesses to be summoned for him or her to appear either at the examining court, or on the trial at the court of oyer and terminer, the clerk of the court of quarter sessions, or of the court of oyer and terminer, as the case may be, shall issue subpoenas for such witnesses, who being summoned and attending, shall have the like allowance for travelling and attendance, and be subject to the same penalty for failing to attend as is above directed.
Jailor may impress guards.	SEC. 11. The keeper of the public jail by order of any two justices of his county, may impress guards for the safe keeping of all prisoners in his custody, to be paid by the public. The fee to the sheriff of the county and to the public jailor, for the keeping and dieting any such prisoner, shall be one shilling per day and no more.
Fee for dieting prisoner. Expence paid out of the criminal's estate.	When the criminal shall be convicted and hath estate sufficient to pay the charges of the prosecution, the whole shall be paid out of such estate.
Allowance to justice of quarter sessions.	SEC. 12. The justices of the said courts of quarter sessions shall receive for their services twelve shillings for each day they shall respectively sit in the said court; for which sum on certificate from the clerk of the court of the number of days they have attended, they shall receive a warrant from the auditor which shall be paid at the public treasury.
How paid.	
Court of oyer and terminer to consist of three judges. Two terms every year to be held at Lexington. Terms six judicial days.	SEC. 13. There shall be a court of general criminal jurisdiction which shall be called the court of oyer and terminer; the said court shall consist of three judges, any two of whom shall be sufficient to form a court; there shall be two sessions of the said court in every year, to be held in the town of Lexington, one to begin on the last Monday of April, and the other to begin on the last Monday of September, to continue each of them six ju-

ridical days unless the business before them shall be finished in less time, in which case the judges may adjourn to the next succeeding court; and if it should so happen that a sufficient number of judges should not attend on the day appointed, any one of the said judges may adjourn the court from day to day for three days successively, and if a sufficient number should not be able to attend, at the end of such adjournment, all suits, matters and prosecutions depending in the said court shall stand continued over to the next succeeding court. The said court shall appoint its clerk, who shall receive such allowances for his services as shall be established by law. And the sheriff of the county where such court is held, and the keeper of the public jail shall be considered as officers of the said court, and execute their duties and the orders of the said court accordingly.

1792.

Cases of adjournment.

What sheriff to attend.
Public jailor, an officer of the court.

SEC. 14. The court of oyer and terminer shall have full power to hear and determine all treasons, murders, felonies and other crimes and misdemeanors which shall be brought before them. They shall also have cognizance of all causes now depending in the supreme court for the district of Kentucky, for any matter or thing which comes within any part of the powers hereby given to them. They shall also have full power to try all criminals who may now be in the jail at Danville by recognizance to appear before the supreme court for the district of Kentucky; and all such persons who shall fail to appear before the court of oyer and terminer on the first day of their session to be held under this act, and to continue there until discharged by due course of law, shall forfeit their recognizance in the same manner that they would have done if such failure had been made in attending on the said supreme court for the district of Kentucky agreeable to the condition of their respective recognizances. And prisoners now in confinement for any offence which ought to be determined in the court of oyer and terminer shall be removed at the public expence, by the sheriff of the county, where they are confined, to the public jail, in order that they may be dealt with according to law.

Powers of the court.

To try all criminals in the Danville jail.

In what cases criminal to forfeit their recognizance.

Prisoners now in confinement to be removed to the public jail.

SEC. 15. The sheriff for the time being for the county in which the court of oyer and terminer is held, shall before every meeting of the court of oyer and terminer summon twenty-four free-holders of this commonwealth

Grand jury to be summoned.

1792. qualified as the laws require for grand jurors, to appear at the succeeding court of oyer and terminer, on the first day thereof, which the said sheriff is hereby empowered to do, as well without his county as within the same ; and the said twenty-four men, or any sixteen of them, shall be a grand jury, and shall enquire of and present all treasons, murders, felonies or other crimes or misdemeanors whatever, which shall have been committed or done within this commonwealth, and upon any indictment for a capital offence being found by a grand jury to be true, against any person or persons, the judges shall cause such person or persons to be immediately arraigned and tried by a petit jury summoned as hereinbefore directed, and he or they being found guilty, pass such judgment as the laws direct, and thereupon award execution ; and if the prisoner shall be found not guilty, to acquit him or her of the charge. And the said court shall have power to direct the time, manner and place of carrying such sentence into execution. *Provided*, That in all trials the defendant shall be allowed counsel, and that when sentence of death shall be passed on any prisoner except in cases of murder, there shall be one calendar month at least between the judgment and execution.
- Their powers. Proceedings on indictment. Petit jury to be summoned. Manner and place of execution directed by court. Defendant allowed counsel. Respite before execution, except for murder.
- Grand jury not to make presentment for less than 40s or 400lb. of tobacco. Penalty on grand juror failing to attend. Clerk to issue summons against persons presented. Venire men & witness's attendance to be entered. How paid.
- SEC. 16. No grand jury shall make any presentment in the court of oyer and terminer, unless the penalty inflicted by law is more than forty shillings, or four hundred pounds of tobacco. Every person summoned to appear on a grand jury, and failing to attend, not having a reasonable excuse, shall be fined by the court in any sum not exceeding forty shillings, to the use of the commonwealth. Upon presentment made by the grand jury of an offence not capital, the court shall order the clerk to issue a summons or other proper process against the person or persons presented, to hear and answer such presentment at the next court, and shall thereupon hear and determine the same according to law. The clerk of the court of oyer and terminer, shall in a book by him kept for that purpose, enter the names of all venire men and witnesses, who attend the trial of criminals at such court, the number of days each shall attend, the ferries they shall have crossed, with the distance they shall have travelled on that occasion, a certificate of which from the said clerk shall entitle the person to whom it is given

en to a warrant from the auditor for the amount, and to payment at the treasury agreeable to law.

SEC. 17. The court of oyer and terminer shall have power to administer all necessary oaths and affirmations and to punish by fine and imprisonment all contempts of authority in any cause or examination before the said court.

SEC. 18. Every person exercising the office of justice of a court of quarter sessions, shall cease to have any power or authority as a member of the county court.

SEC. 19. All causes now depending in the county courts for any matter or thing of which jurisdiction is hereby given to the courts of quarter sessions, shall be removed to the said courts of quarter sessions; in all other cases now depending before the county courts, they shall decide as is now directed by law.

SEC. 20. To prevent all doubts concerning the proceedings which have been, or may be had in the supreme court for the district of Kentucky or the county courts, it is hereby declared and enacted, that the same shall be as valid as if they had been had in the same courts prior to the first day of June in the present year.

SEC. 21. So much of all and every act or acts of assembly as is contrary to, or comes within the purview of this act, shall be and the same is hereby repealed.

SEC. 22. *And be it further enacted*, That the county courts of each county, shall lay off their respective counties into districts, and shall appoint a constable in each district, who shall act under appointments to execute the duties enjoined them by law.

SEC. 23. This act shall commence and be in force on the tenth day of August next.

1792.

Court to administer oaths and punish contempt.

Justices of quarter sessions to have no power as justices of county courts.

Causes in county courts removed to quarter sessions.

Proceedings in supreme and county courts confirmed.

Repealing clause.

Constables how appointed.

Commencement.

CHAPTER XXIV.

An ACT establishing the Court of Appeals.

Approved, June 28, 1792.

An additional term was given by an act of the November session following, (Chap. 41)—In 1795 the original jurisdiction of the court of appeals was taken away and vested in the district courts, (Chap. 201)—In 1796 an act was passed establishing the court of appeals, in which the temporary provisions, and such as relate to its original jurisdiction are omitted. The power of awarding writs of *mandamus* and *certiorari* is not recognized in that act, (Chap. 277)—At the November session of 1798, an act was passed to amend the act of 1796, (Vol. II, Chap. 155)—in 1799, an act was passed (*inter alia*)

1792.

for regulating proceedings in the court of appeals in certain cases, (Vol. II. Chap. 210)—in 1800 an act was passed concerning the court of appeals, (Vol. II. Chap. 302)—in 1801, an act was passed to amend the act establishing the court of appeals, (Vol. II. Chap. 358)—in 1803, the act of 1800 was amended, (Vol. III. Chap. 81)—in 1804, the second section of the act of 1801 was repealed, (Vol. III. Chap. 185)—in 1806, the salaries of the judges were increased, (Vol. III. Chap. 370)—in 1807, the right to appeal on the dissolution of injunctions on motion was taken away, (Vol. III. Chap. 500) and the judges directed to state the governing principles of their decisions, (Vol. III. Chap. 484) and to cause their decisions to be reported. (Vol. III. Chap. 487.)

In the case of *Johnson vs. Moore* at the May term, 1793, a question was made whether a writ of error would lie on a judgment for less than £ 30 and on great consideration it was decided in the affirmative. In the case of *Carland vs. Irvine* at the spring term of 1801, a question was made whether the judgment rendered on the dissolution of an injunction upon motion, was such a final judgment that a writ of error would lie on it; it was adjudged in the affirmative—reconsidered from March until July and confirmed. This decision produced the act of 1801, which after prohibiting appeals and writs of error from judgments not final, declares that the final judgment intended by this act is that which finally terminates the suit in the inferior court. This declaration is the part of the act which was repealed by the act of 1804; but it is reproduced in substance by the act of 1807, first above referred to.

Court of ap-
peals to consist
of three judges.

SECTION 1. *BE it enacted by the general assembly,* That the court of appeals shall consist of three judges, any two of whom shall be sufficient to constitute a court, one of them shall be called chief justice of Kentucky, another the second judge of the court of appeals, and another the third judge of the court of appeals, and shall be commissioned and have precedence accordingly.

Oath of office.

SEC. 2. Every person so commissioned, before he enters upon the duties of his office shall take the following oath or affirmation, to wit, "I A. B. do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as a judge of the court of appeals according to the best of my abilities and understanding, agreeably to the constitution and laws of Kentucky. So help me God," omitting in the case of an affirmation the words "So help me God"—which oath or affirmation may be administered by any justice of the peace, and a certificate of the taking of which shall be recorded in the court of appeals.

Terms.

SEC. 3. For hearing and determining suits which ought to be instituted in the court of appeals, and for finally deciding those of which cognizance is hereafter given to that tribunal, the said court shall be holden twice in every year, namely, on the first Monday in the months

of May and October, at the house to be provided for that purpose in the town of Lexington, or at such other place as shall be appointed by the general assembly. That each term shall continue for the space of thirty judicial days, unless the business depending before the said court shall be sooner dispatched; but the said court shall have power to prolong their session beyond the term, for expediting the business depending before them if they shall see cause.

1792.

Where held.

SEC. 4. The court of appeals or the judges thereof in vacation, shall appoint the clerk of the said court, who before he enters upon the duties of his office, shall take the oath prescribed by the constitution to be taken by all officers of the commonwealth, and shall give bond to the governor for the time being in a reasonable penalty, with one security at least to be approved by the said court or the judges thereof, conditioned faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and orders of the said court; which bond shall be recorded in the said court of appeals, and shall not be void on the first recovery, but may be put in suit, and prosecuted from time to time at the costs and charges of any party or parties injured, until the whole sum of the penalty expressed in such bond shall be recovered thereon.

Clerk appointed.

To take oath.

Give bond.

Condition.

To be recorded.

Who may prosecute thereon.

SEC. 5. The court of appeals shall annually appoint one of the judges thereof to inspect the clerk's office of the said court, and to report to the next session of the said court the condition in which they find the papers and records, which report shall be recorded.

His office to be inspected.

SEC. 6. The sheriff of the county in which the court of appeals shall be held shall be adjudged to be an officer of the said court, and shall attend the same with a sufficient number of deputies accordingly; and the said sheriff and his deputies shall be bound to perform the same duties in relation to the business of the court of appeals as they are now by law directed to perform in relation to the business of the supreme court for the district of Kentucky.

Sheriff of the county an officer of the court.
His duty.

SEC. 7. Until it shall be otherwise provided by law, the fees and compensation to attornies at law the clerk and sheriff, and the allowances to witnesses shall be the same in the court of appeals as in similar cases are now allowed in the said supreme court; and they shall be

Fees to attornies, &c.

1792.

Allowance to clerk, &c. for extra services.

paid, collected and accounted for in the same manner as is now prescribed in the case of the said supreme court—and for the services of the clerk and sheriff which are unlike to those in the said supreme court, a reasonable compensation shall be made by the parties, to be determined by the court of appeals according to the equity and the nature of the case, having regard to the fees allowed for services most similar to them in the said supreme court.

Where the sheriff is interested court to appoint a person to act.

SEC. 8. In all cases in which the sheriff or his deputy attending the court of appeals shall be interested, or shall not be an indifferent person, the duty of such sheriff shall be performed by such disinterested or indifferent person as the court of appeals may appoint, and the person so appointed is hereby authorised to perform the same.

Fees to be taxed.

SEC. 9. Upon all judgments and decrees given and made in the court of appeals, the same fees shall be taxed, as are now directed to be taxed in judgments and decrees in a similar nature in the said supreme court.

No discontinuance though judges fail to attend.

SEC. 10. There shall be no discontinuance of any suit, process, matter or thing returnable to or depending in the court of appeals although a quorum of judges shall fail to attend at the commencement or any other day of any session; but if a majority of them shall fail to attend at the commencement of any session, any judge of said court or the sheriff attending the same may adjourn the said court from day to day for three days successively; and if a quorum shall not attend on the fourth, or having attended one day shall fail to attend on a subsequent day of a session, the court shall stand adjourned to the court in course.

Executions how to issue.

SEC. 11. The executions to be issued from the court of appeals shall be the same as those now by law directed to be issued from the said supreme court; and the return days shall be appointed by the said court.

Powers of the court as to process.

SEC. 12. The court of appeals shall have power to direct the writs, summonses, process, forms and modes of proceeding to be issued, observed and pursued by the said court of appeals, and they shall have power to issue writs of mandamus according to law, and writs of certiorari to inferior courts according to the rules hereinafter mentioned.

SEC. 13. The court of appeals shall have original and

final jurisdiction in all cases in which by the constitution of this commonwealth original and final jurisdiction is given to the said court of appeals.

1792

SEC. 14. In cases of which the courts of quarter sessions have cognizance, also in such cases as shall be brought before the court of appeals, by appeal or writ of error or other proper mode to reverse decrees or judgments of the supreme court for the district of Kentucky, the court of appeals shall have appellate jurisdiction under the regulations respecting appeals and writs of error hereinafter mentioned.

Appellate jurisdiction.

SEC. 15. The court of appeals shall also have appellate jurisdiction in all cases wherein appeals to reverse decrees and judgments of the said supreme court for the district of Kentucky have been made to, and were depending on the first day of June in the present year in the court of appeals for the state of Virginia. *Provided*, That the party prosecuting such appeal shall lodge an authenticated copy of the record, in which the decree or judgment appealed from was entered in the clerk's office of the court of appeals before the expiration of the second term of the said court. And the bonds given for the prosecution of the said appeals shall continue and be of the same force as if the said appeal had been determined in the court of appeals for the state of Virginia.

Appellate jurisdiction in other cases.

Rules of proceeding in those cases.

SEC. 16. It shall be lawful for any defendant in any action or suit in law or equity in any inferior court in which by the constitution of this commonwealth, the court of appeals has original and final jurisdiction, to petition the said court of appeals or any judge thereof in time of vacation to remove the same to the court of appeals. And if it shall appear to the satisfaction of the said court or judge, that the said court of appeals hath jurisdiction thereof, the said court or judge may direct the clerk to issue a certiorari for that purpose. But the said court or judge may if they see cause, require notice to be given of the said petition, to the adverse party, his agent or attorney before he decides thereon: and the said court of appeals may at any time, for good cause remand the said suit or controversy to the court from whence it was removed, by procedendo.

How suits removed from inferior courts.

SEC. 17. In appeals and writs of error, the following rules shall be observed:

Writs of error.

No appeal shall be granted from the judgment or de-

1792. **cree of the courts of quarter sessions to the court of ap-**
peals, unless such judgment or decree be final and a-
mount exclusive of costs to twenty pounds, or relate to a
franchise or freehold.
- No appeal be-**
fore final judg-
ment. Every appeal shall be prayed at the time of rendering
 the judgment, sentence or decree.
- Time of ap-**
pealing. The person appealing shall by himself or a responsi-
 ble person on his behalf in the office of the clerk of the
 court of quarter sessions, give bond and sufficient secu-
 rity to be approved by the court and within a time to be
 fixed by the court, to the appellee for the due prosecu-
 tion of his appeal.
- Penalty of bond** The penalty of the said bond shall be in a reasonable
 sum in the discretion of the court.
- To lodge copy**
of record, and
when. It shall be the duty of the appellant to lodge an au-
 thenticated copy of the record before the expiration of
 the second term after the appeal shall be entered in the
 clerk's office of the court of appeals, or else it shall stand
 dismissed, unless further time shall be granted by the
 court before the end of such second term for lodging the
 same.
- Plaintiff to as-**
sign errors in
law. The plaintiff in error except in cases of wills, mills and
 roads, shall assign errors upon matters of law only, aris-
 ing on the face of the proceedings.
- Errors in fact,**
&c. In cases of wills, mills and roads, the plaintiff in error
 may assign errors upon matters of fact, as well as upon
 matters of law.
- Error coram**
vobis. But nothing herein contained shall be construed to af-
 fect a writ of error brought upon the grounds of a writ
 of error *coram vobis*.
- Damages on**
affirmance. If the judgment or decree be affirmed in the whole,
 the appellant shall pay to the appellee ten per centum on
 the sum due thereby, besides the costs upon the original
 suit and appeal.
- On reversal.** If the judgment or decree shall be reversed in the
 whole, the appellee shall pay to the appellant such costs
 as the court in their discretion shall award.
- Costs to be di-**
vided. Where the judgment or decree shall be reversed in
 part and affirmed in part, the costs of the original suit
 and appeal shall be apportioned between the appellant
 and appellee in the discretion of the court.
- what judgment**
court to give. The court of appeals shall in case of a partial rever-
 sal give such judgment or decree as the court of quarter
 sessions ought to have given.

On appeals or writs of error it shall be lawful for the court of appeals to issue execution, or remit the cause to the court of quarter sessions, in order that execution may be there issued, or that other proceedings may be had thereupon.

1792.

Court may issue execution or remand the cause.

SEC. 18. Writs of error shall on demand of the party applying for the same, be issued as a matter of right; except in those cases which may be brought before and determined by the court of oyer and terminer, in which cases no certiorari, appeal, supersedeas or writ of error, shall be allowed.

Writ of error matter of right. Except cases in court of oyer and terminer.

No writ of error shall be a supersedeas, unless the court of appeals, or some judge thereof in vacation, as the case may be, after inspecting a copy of the record and being of opinion that there is sufficient error therein for reversing the judgment in whole or in part, shall certify the same; in which case the clerk issuing the said writ shall endorse on the said writ of error, that it shall be a supersedeas, and it shall be obeyed as such accordingly. And it shall also be necessary before a writ of error shall operate as a supersedeas, that bond, to be approved by the clerk of the court issuing the said writ, shall be given in the same manner, under the like penalty, and the plaintiff in error shall lodge an authenticated copy of the record under the same regulations, and the parties in error shall be subject to the same judgment and mode of execution, as is already directed in the case of appeals.

Writ of error no supersedeas unless endorsed as such.

And a bond shall be given in clerk's office.

Same rules as heretofore.

A writ of error shall not be brought after the expiration of five years from the passing the judgment complained of, except in cases of writs of error to reverse judgments or decrees of the supreme court for the district of Kentucky, which may be brought at any time before the first day of June one thousand seven hundred and ninety-seven, and not afterwards. But where a person thinking himself aggrieved by any decree or judgment which may be reversed in the court of appeals shall be an infant, feme covert, non compos mentis, or imprisoned when the same was passed, the time of such disability shall be excluded from the computation of the said five years.

Limitations of writs of error.

Whensoever the court of appeals shall be divided in opinion on hearing any appeal, or writ of error, the judgment or decree appealed from shall be affirmed.

When court divided judgment is affirmed.

SEC. 19. The clerk of the court of appeals shall care-

1792.
Duty of clerks.

fully preserve the transcript of records certified to his court, with the bonds for prosecution, and all papers relative to them, and other suits depending therein, docketing them in the order he shall receive them, that they may be heard in the same course, unless the court for good cause to them shewn, direct any to be heard out of its turn.

The proceedings of every day during a term, shall be drawn at full length by the clerk against the next sitting of the court, and such corrections as may be necessary, being first made therein, they shall be signed by the presiding judge.

When any cause shall be finally determined, the clerk shall make a complete record thereof; and all writs, process and summonses issuing from the court of appeals, shall be signed by the clerk of the same, and shall bear test in the name of the chief justice for the time being.

Witnesses how
summoned and
their allowan-
ces.

SEC. 20. Witnesses shall be summoned in the same manner, be entitled to the same allowances, have the same privileges, and be subject to the same penalties that are now prescribed by law respecting those summoned to attend the supreme court for the district of Kentucky: more than three witnesses for the proof of any particular fact shall not be allowed in a bill of costs.

Jurors to be
summoned.

Jurors shall be summoned in the same manner, and be liable to the same fines and punishments which are now by law inflicted on those summoned to, and attending on the said supreme court.

Power to ad-
minister oaths
and punish con-
tempers.

SEC. 21. The court of appeals shall have power to impose and administer all necessary oaths and affirmations; to punish by fine and imprisonment all contempts of authority in any cause or examination before the said court; and to establish all necessary rules in conformity with the constitution, and laws of this commonwealth.

Commissions to
take depositions.

SEC. 22. For good cause the court of appeals, or any judge thereof, may grant commissions for the examination of witnesses, and the clerk of the said court when any witness shall be about to depart from the state, or shall by age, sickness or otherwise, be unable to attend the court, or where the claim or defence of any party or a material part thereof shall depend on a single witness, may upon affidavit thereof, issue a commission for taking the deposition of such witness *de bene esse*, to be read as

evidence at the trial, in case the witness shall then be unable to attend: but the party obtaining such commission shall give reasonable notice to the other party of the time and place of taking the deposition.

SEC. 23. All the papers belonging to those cases now depending in the supreme court for the district of Kentucky in which the court of appeals has original jurisdiction given to it by the constitution of this commonwealth, shall be delivered to the clerk of the court of appeals, and the cases to which they belong, be docketed in such manner as shall be directed by the said court. And it shall be the duty of the attorneys engaged in those cases in the supreme court for the district of Kentucky to prosecute and defend the same in the court of appeals, in the same manner that they ought to have done if those cases had been continued in the said supreme court for the district of Kentucky.

SEC. 24. In the court of appeals the parties may plead and manage their own causes personally, or by their attorneys in fact properly authorised for that purpose by letters of attorney, or by such attorneys at law as by the rules of the said court shall be permitted to manage and conduct causes therein.

SEC. 25. The court of appeals may direct an order of survey to any deputy surveyor, or to any other person who shall be nominated for that purpose by the parties to the suit in which the order shall be made. When a survey shall be made by a deputy surveyor, no more than five parts out of twelve of the present fees demandable by the surveyor, shall be paid to the said deputy surveyor, or be taxed in the bill of costs. And the deputy making such survey shall not be chargeable for any part of the fees due thereon to his principal, neither shall the principal surveyor be chargeable for any part of such fees to the Transylvania Seminary.

When a survey shall be made by a person nominated for that purpose by the parties, so much and no more shall be taxed in the bill of costs for the making of such survey, as shall have been agreed by the parties to be given for the making thereof.

SEC. 26. All suits now depending in the supreme court for the district of Kentucky, which have been brought therein by appeal, writ of error or supersedeas to reverse the judgment or decree of any county court

1792.

Removal of papers.

How parties may appear.

Orders of surveyors.

Fees thereon.

No fees to be paid to Transylvania seminary.

Where persons nominated to survey, what fees.

Removal of suits.

1792.

within this state shall be removed to the court of appeals, and such proceedings shall be had therein, as is above directed, to be had in other cases after appeals, writs of error or supersedeas shall be granted by the said court.

Commence-
ment.

SEC. 27. This act shall commence and be in force on the first day of July next.

CHAPTER XXV.

An ACT regulating the town of Lexington.

Approved June 29th, 1792.

Freeholders,
house-keepers,
&c. of the town
of Lexington
& within one
mile,

To elect annu-
ally.

Election how
conducted and
where held.

Sheriff to make
return of per-
sons elected to
clerk, &c.
Poll to be re-
corded with the
proceedings of
trustees.

Powers of trust-
ees.

SECTION 1. *BE it enacted by the General Assembly,* That it shall be lawful for the free-holders, house-keepers and free male inhabitants of the town of Lexington, in the county of Fayette, and those within one mile of the court-house in the said town, aged twenty-one years, other than free negroes and mulattoes, who have resided therein for the space of six months, and who possess in their own right within the said town and limits aforesaid, property of the value of twenty-five pounds, to elect and choose annually on the second Tuesday in August, seven trustees, which election shall be conducted by the sheriff of the county, and held at the court-house.

SEC. 2. The sheriff shall make return of the persons elected to the clerk of the court, to be by him recorded and return a copy of the poll by him taken to the person having the greater number of votes, to be recorded with the proceedings of the said trustees in books to be by them kept for that purpose.

SEC. 3. The said trustees and their successors, or a majority of them, shall have power to erect and repair a market-house in the said town, to appoint a clerk of the market and prescribe his duties, to regulate and repair the streets and high-ways in the said town and limits aforesaid, to remove nuisances and obstructions therein at the expence of the party who may occasion them (or otherwise) and to impose taxes not exceeding one hundred pounds annually, on the titheables and property real and personal within the said town and limits aforesaid, for the purpose of carrying into execution any or all of the powers hereby given them. To make provision and regulations for the collecting and accounting for the taxes so imposed, by appointing a collector and

I. YEAR OF THE COMMONWEALTH.

161

directing distress to be made for delinquencies, or by any other ways and means ; and to make such ordinances and regulations not contrary to the laws and constitution of this commonwealth, as shall by a majority of them be thought necessary for carrying this act into effect.

1792.

SEC. 4. No person shall be capable of being elected, or to act as a trustee, who is not a free-holder and inhabitant of said town or the limits aforesaid, nor shall any inhabitant of the said town or limits be capable of being appointed or act as a surveyor of any road without the said town or limits.

What persons eligible as trustees.

SEC. 5. Vacancies occasioned by death or any disqualification or otherwise, shall be supplied by elections to be made in manner herein before directed, on a day to be appointed by the remaining trustees and return thereof made by the sheriff in manner herein before directed.

Vacancies how supplied.

SEC. 6. Whensoever a trustee shall cease to be a freeholder inhabitant or resident as aforesaid, he shall be considered as disqualified and another elected in his stead.

Disqualification of trustees.

SEC. 7. Immediately after every annual election of trustees directed by this act, the powers of their predecessors shall cease, and the trustees so elected shall be put in possession of the property, papers and records, which the trustees whom they succeed had possession of, and the trustees elected by virtue of this act, shall possess and exercise the same powers and authorities as now are or heretofore have been vested in any former trustees of the said town, by any law for establishing or regulating the same.

Powers of former trustees annulled and their successors to take possession of property, papers, &c. Trustees elected under this act to have same power as the former.

CHAPTER XXVI.

An ACT authorising the trustees of the town of Paris, to convey to John Allen by deed in fee simple, certain lots therein contained.

Approved, June 29, 1792.

Preamble.

SECTION 1. WHEREAS it is represented to this present general assembly, that two hundred and fifty acres of land including Bourbon court-house, has been by an act of the general assembly of Virginia, laid off in a town by the name of Paris, and vested in trustees for the

1792.

purpose of selling and conveying the said lots to the purchasers thereof.

And whereas there is a claim set up to the said two hundred and fifty acres of land, by John Allen who has become a purchaser of a number of the said lots. And whereas the trustees by the above recited act of the state of Virginia are authorised and required to retain the money arising from such sales in their hands until the title of the said two hundred and fifty acres of land shall be finally decided upon.

Trustees of Paris to convey to John Allen certain lots on his giving security, &c.

SEC. 2. *Be it therefore enacted by the general assembly,* That the said trustees are hereby empowered and required, to convey to the said John Allen by deed in fee simple all those lots in the said town, which he may have purchased, on his securing to the said trustees the payment of the purchase money with lawful interest thereon, until the final determination of the title of the said lands.

CHAPTER XXVII.

An ACT for regulating the fees of County Court Justices.

Approved, June 29th, 1792.

This act was amended by one passed at the November session ensuing, (Chap. 51) and by another passed in 1793, (Chap. 131) magistrates fees are included in the general fee bill of the November session, 1798, (Vol. II. Chap. 174. — By an act of 1799 their fees were taken away, except for taking depositions and swearing appraisers, (Vol. II. Chap. 205) — By an act passed in 1802, fees were given them for certifying judgments on appeal, for certifying oaths and powers of attorney, and for services rendered on attachments, and respecting strays, (Vol. III. Chap. 24) — In 1805, fees were given them generally for all services which they were required to perform, (Vol. III. Chap. 29) — In 1806 an act was passed repealing so much of every act as allowed justices of the peace fees for issuing warrants, executions, subpoenas, and giving judgments, (Vol. III. Chap. 372.)

Allowances to county court justices.
By whom to be paid.
How collected.

Fees to be taxed and the rate,

SECTION 1. *BE it enacted by the general assembly,* That the following allowances shall be made to the justices of the county court in each county, to be paid by the party at whose request the business shall be done, and which shall be taxed in the bill of costs and collected by the sheriff or constable in like manner as other debts on execution are or ought to be collected: — For issuing a warrant nine pence; for a summons for a witness six pence; for entering judgment and filing papers one shilling; for giving a certificate of an oath four pence; for posting a stray twelve pence; for issuing an execution

eight pence ; for issuing an attachment twelve pence ; taking bond, one shilling and six pence ; for copy of judgment and other papers relative thereto, one shilling and six pence ; for issuing a peace or search warrant, one shilling and three pence ; for attending to take depositions or on an arbitration, four shillings for each day ; for taking special bail, one shilling and six pence. 1792.

SEC. 2. *And be it further enacted*, That each justice shall from time to time keep a fair record of all his proceedings in a book to be by him kept for that purpose. And no justice shall receive any fee for more than three summonses for witnesses to each party in any one suit. Duty of justice.

SEC. 3. This act shall commence and be in force from and after the 10th day of August, 1792. Commence-
ment.

CHAPTER XXVIII.

An ACT for dividing certain lands between Mary May, John May, Lewis Craig and Philemon Thomas.

Approved June 28, 1792.

Mary May and John May infant heirs of John May, deceased, could not on account of their infancy, enter into an agreement for the division of the partnership lands. This act appointed commissioners to make the division.

CHAPTER XXIX.

An ACT for the relief of Innes B. Brent.

Approved, June 29, 1792.

As deputy sheriff of Fayette county, he had failed to take appearance bail from Elisha Winters—Winters removed out of the United States, and Brent became liable for the debt—Winters had an equitable claim to a tract of land in Fayette county, and the object of this act was to devise a suit by which that could be subjected or Brent's indemnification. This process however became unnecessary.—*Vide* chap. 95, *seq.*

CHAPTER XXX.

An ACT concerning the appointment of a Sheriff for the County of Lincoln.

Approved June 14, 1792.

The governor (Isaac Shelby) was sheriff of Lincoln, until the day when the government of Kentucky came into operation. This act, reciting that it was doubtful whether any adequate provisions had been made by the constitution for supplying such vacancies, directs an appointment to be made by the governor and senate, to continue until the 10th of August ensuing, and no longer.

JUNE SESSION,

1792.

CHAPTER XXXI.

An ACT concerning Militia Fines.

Approved June 28, 1792.

Every provision of this act is obsolete, *vide* the observations on chap. 17, *ante*.

CHAPTER XXXII.

An ACT to appoint trustees to convey certain Lands of Robert Todd, deceased.

Approved June 28, 1792.

The provisions of this act were such as are now general by the several acts providing for the division and conveyance of lands, where minors or non-residents are concerned.

CHAPTER XXXIII.

An ACT appointing Trustees to sell a part of the Lands of Timothy Peyton, deceased, for the payment of his debts.

Approved June 29, 1792.

The lands were directed to be sold in order to save the personal estate and slaves for his children.

CHAPTER XXXIV.

An ACT for paying the Members of the late Convention for their services.

Approved June 28, 1792.

This act gave to each member and officer a sum in gross, without any reference to the time of employment, viz. to the president, 20 dollars; to the clerk, 50 dollars; each of the members and the sergeant-at-arms, 12 dollars apiece; and the door-keeper, 10 dollars.

CHAPTER XXXV.

An ACT altering the time of making certain returns.

Approved June 28, 1792.

Certain process
when return-
able.

SECTION 1. *BE it enacted by the General Assembly,* That all process which would be returnable to the next August court of quarter sessions, except such courts as shall be held between the first and tenth days of August, shall be and same are hereby directed to be returnable to the September court next, and the clerks of the several

I. YEAR OF THE COMMONWEALTH.

115

courts are hereby directed to make out their dockets and enter the same thereon accordingly.

1792.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER XXXVI.

An ACT granting a certain sum of money to the Public Printer.

Approved June 29, 1792.

This act authorised an immediate advance of £. 100 to defray instant expenditures.

CHAPTER XXXVII.

An ACT for paying the Officers of the General Assembly for their services.

Approved June 29, 1792.

This was merely the usual appropriation act, which has had its effect.

November Session, 1792.

CHAPTER XXXVIII.

An ACT giving further time to the owners of lands to survey the same, and for returning platts and certificates to the Register's Office.

Approved November 8th, 1792.

Continued by an act of 1793, (Chap. 98)—by one passed in 1794, (Chap. 156)—by one passed in 1795, (Chap. 195)—by one passed at the November session 1797, (Chap. 333,) which is the last act extending the time of making surveys. The time for returning platts and certificates was prolonged in November, 1798, (Vol. II. Chap. 106)—in 1799, (Vol. II. Chap. 193)—in 1800, (Vol. II. Chap. 271)—in 1801, (Vol. II. Chap. 347)—in 1803, (Vol. III. Chap. 95)—in 1804, (Vol. III. Chap. 165)—in 1806, (Vol. III. Chap. 332.) For much curious learning on this subject, *vide* the case of *Simpson vs. the register*, spring term, 1803.

WHEREAS, It appears that an act passed by the Virginia assembly in the year of our lord one thousand seven hundred and eighty-five, entitled "an act to repeal an act entitled an act concerning entries and surveys on the western waters, and for other purposes," which hath

Preamble.

1792.

Of Entries.

What time given for returning platts, &c.

been continued by subsequent acts, will expire before the same can be complied with :

SEC. 1. *BE it enacted by the general assembly*, That the above recited act be continued from the passage hereof, and the further time of one year from the first day of January next be allowed the owners of entries to comply with the requisitions of the same, during which time no such entry shall be forfeited.

And whereas an act entitled "an act giving further time to the owners of surveys to return the platts and certificates thereof, to the land-office," will expire before the next session of assembly :

SEC. 2. *Be it enacted*, That the further time of one year to be computed from the eighth day of August next, be allowed for returning all platts and certificates of survey to the register's office.

CHAPTER XXXIX.

An ACT prescribing certain duties for the Attorney General.

Approved, November 24th, 1792.

This act was expressly repealed in 1793, (Chap. 106)—At the January session of 1798, an act was passed prescribing the duties of the attorney general, which, however, contained no provision similar to this, (Vol. II. Chap. 46) — The principal duties of that officer now depend on an act passed at the November session, 1798, (Vol. II. Chap. 155) one passed in 1799, (Vol. II. Chap. 184) and the circuit court law of 1802.

SECTION 1. *BE it enacted by the general assembly*, That it shall be the duty of the attorney general of this state, and he is hereby required, to give his attendance during the present, and future sessions of the legislature to draft or assist in drafting bills, in conformity to the resolutions of either branch thereof.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER XL.

An ACT to disable Officers under the Continental Government, from holding offices under the authority of this Commonwealth.

Approved, November 30th, 1792.

In the case of Kennedy vs. the justices of Madison, October term 1804, this act was adjudged unconstitutional; at the session of 1794 an act was

I. YEAR OF THE COMMONWEALTH.

117

passed to explain it, (Chap. 176)—At the November session, 1792, an act was passed imposing fines on persons guilty of holding offices under both governments at the same time, (Vol. II. Chap. 179.) The constitution of 1799 renders all officers of the United States ineligible to the office of governor or member of either branch of the State legislature.

1792.

WHEREAS it is judged necessary that all persons who shall hold any office either executive, legislative, judicial or lucrative under the government of the United States, ought to be disqualified from holding or executing any office of honor, trust or profit, under the government of this commonwealth; Therefore,

Preamble.

SECTION 1. *Be it enacted by the General Assembly,* That the members of the congress of the United States, and all person who shall hold any legislative, executive, judicial or lucrative office whatever under the authority of the same, shall be ineligible to, and incapable of holding a seat in either house of assembly of this state, or of holding or exercising any office either executive, judicial, or lucrative whatever, under the government of this commonwealth; under the penalty of two hundred pounds, to be recovered by action of debt or information in any court of record within this state.

Persons incapable of holding office.

SEC. 2. So much of every act or acts as comes within the purview of this act, shall be and the same is hereby repealed.

Repealing clause.

CHAPTER XII.

An ACT authorising the Court of Appeals to hold an additional session.

Approved, December 6th, 1792.

Vide the prelection to chap. 24, ante.

SECTION 1. Whereas it is judged expedient and necessary for the expedition of business cognizable in the high court of appeals, that the said court should in the year 1793, hold one other session in addition to those now required by law to be holden for the said year:

Preamble.

Be it therefore enacted by the general assembly, That the judges of the said court shall, and they are hereby authorised and required on the first Monday in January next, to hold a court in addition to those now required by the above recited act to be holden for the said year, and the said court shall continue to sit thirty judicial days, unless the business necessary to be performed at the said

Court of appeals when authorised to hold an additional session.

How long to sit.

1792. term, shall in the opinion of the said judges be sooner completed. And the said court shall at their additional session have the same power and take cognizance of all and every matter and matters as they are authorised to do at any of their annual sessions established by the said recited act, any thing therein to the contrary notwithstanding.

Powers.

CHAPTER XLII.

An ACT for establishing a Town at the mouth of Salt River.

Approved, December 6th, 1792.

Preamble.

SECTION 1. WHEREAS, it is represented to this present general assembly that the establishing a town at the confluence of Salt and Ohio rivers on the upper side of Salt river and on the lands of William Johnston will be of public utility :

A town established.

Name.

Trustees.

Their powers.

Vacancies how supplied.

Trustees to advertise.

BE it therefore enacted by the general assembly, And it is hereby enacted by the authority of the same, that one hundred acres of land, at the junction of said rivers, be laid off into lots with convenient streets, and established a town to be called and known by the name of Williams-ville, and that William Pope, Lewis Fields, Benjamin Johnston, Thomas M. Winn and George Slaughter be and are hereby appointed trustees of the same, which said trustees or a majority of them are hereby authorised to make such rules for the regular building thereon, as to them shall appear most conducive to the good and convenience of the inhabitants ; and have full power to settle and determine disputes respecting the limits of said lots, and for clearing, cleansing and keeping in good order the streets thereof. In case of the death, resignation or any other inability of any one or more of said trustees to act, the remaining trustees are hereby vested with power to supply such vacancy or vacancies by appointing suitable persons for that purpose, which trustees so appointed shall have the same power as those hereinbefore appointed.

SEC. 2. *And be it further enacted, That the said trustees or a majority of them, shall as soon as may be convenient, after having advertised the day of sale of the lots in said town in the Kentucky Gazette, and at the court house doors of the counties of Jefferson and Nelson,*

proceed to sell the same at public vendue on six months credit, taking bond with sufficient security for the amount of the several purchases to the said William Johnston.

1792.

To take bond and security.

SEC. 3. *And be it further enacted*, That the owners or purchasers of lots in the said town of Williamsville, shall within five years from the day of sale, erect and build thereon a dwelling house of the dimensions of sixteen feet by twenty-four feet, at least, with a brick or stone chimney, and actually reside therein or procure a person in their stead for and during the term of one year from the time in which the said shall be built; and on failure thereof the said trustees or a majority of them, shall take into their possession such person's lot and sell the same for the best price that can be had, subject to the restrictions aforesaid, and apply the money arising from such sale to the use and advantage of the said town.

Terms of holding lots.

SEC. 4. *And be it further enacted*, That as soon as the owners of lots in the said town shall have built upon and saved the same according to the directions of this act, in building a house and residing therein as aforesaid, they shall be entitled to and enjoy all the rights, privileges and immunities which the freeholders and inhabitants of other towns in this state (not incorporated) hold and enjoy.

Inhabitants to enjoy privileges, &c.

SEC. 5. *And be it further enacted*, That nothing herein contained shall in any wise affect, alter or impair the right of any other person or persons to the said land hereby proposed to be laid off into a town, saving and reserving to every person who shall purchase a lot or lots in the said town, and shall comply with the terms proposed by this act, and pay to the right owner of said land the purchase money for said lot or lots, the right to the lots they shall have purchased.

Rights reserved.

CHAPTER XLIII.

An ACT for forming a new County from Fayette and Bourbon.

Clarke county formed,

Approved December 6, 1792.

The first section describes the boundary, for which see chap. 295 of this volume. The remaining sections were temporary, and have had their effect.

*An ACT more effectually to prevent persons dealing
with Slaves.*

Approved, December 6th, 1792.

At the January session of 1798, an act was passed to reduce into one the several acts respecting slaves, free negroes, mulattoes and Indians, (Vol. II. Chap. 63)—At the November session of the same year, an act was passed to amend and declare the law relative to the trial of slaves, (Vol. II. Chap. 144) which was repealed by an act passed in 1800 on the same subject, (Vol. II. Chap. 308)—In 1801 an act was passed respecting slaves executed in certain cases, (Vol. II. Chap. 344)—The act of 1798 was amended by an act of 1802, (Vol. III. Chap. 16)—In 1806, the act establishing circuit courts was amended as far as relates to the trial of slaves, (Vol. III. Chap. 399.)

It is remarkable that the present act authorises actions on the case to be brought in the county court, although it was passed about four months after the quarter session court law took effect.

SECTION 1. *BE it enacted by the General Assembly,*

Dealing with
slaves prohibi-
ted.

That no person whatsoever shall buy sell or receive of to or from any slave any coin or commodity whatsoever, without the leave or consent of the master or owner of such slave in writing, expressive of the article so permitted to be bought or sold, and if any person shall presume to deal with any slave without such leave or consent, he or she so offending shall forfeit and pay to the master or owner of such slave, four times the value of such article so bought, sold or received, with full costs by action upon the case in any county court of this commonwealth where the sum shall amount to five pounds or upwards, otherwise to be recovered by way of warrant before some justice of the peace of the county in which the matter shall have originated, and shall also forfeit and pay the further sum of four pounds to any person who will sue for the same with costs, before any justice of the peace, or on failure or refusing so to pay, shall by order of such justice, be committed to prison until he or she make such payment. And any slave offering to sell without such permit, shall receive ten lashes by order of any justice of the peace before whom he or she is convicted.

Penalty.

How recover-
able.

Punishment on
a slave offer-
ing to sell.

Commence-
ment.

SEC. 2. This act shall be in force from and after the first day of March next, and so much of the act entitled "an act for the better government of servants and slaves" as comes within the purview of this act, shall be and the same is hereby repealed.

I. YEAR OF THE COMMONWEALTH.

121

CHAPTER XLV.

1792.

An ACT to regulate and discipline the Militia of this Commonwealth, and for other purposes.

Approved December 10, 1792.

Vide the observations on chap. 17, ante.

CHAPTER XLVI.

An ACT for dividing the County of Nelson.

Approved December 15, 1792.

Hardin county
formed.

The first section describes the boundary, for which see chap. 295 of this volume. The remaining sections were temporary, and have had their effect.

CHAPTER XLVII.

An ACT to amend an act entitled "an act concerning Strays."

Approved December 15, 1792.

Vide the observations on chap. 19, ante.

CHAPTER XLVIII.

An ACT more effectually to prevent obstructions in Water Courses.

Approved December 15, 1792.

In 1794, an act passed for opening the navigation of Main Licking, (Chap. 149)—In 1797 an act was passed to reduce into one the several acts concerning mill dams, and other obstructions in water courses, (Chap. 292)—This act was amended in 1799, (Vol. II. Chap. 211) and on the same day an act was passed allowing mill dams to be built on main-Licking, under certain restrictions, (Vol. II. Chap. 212) which was repealed in part in 1802, (Vol. III. Chap. 7)—In 1802 the act of 1797 was again amended, (Vol. III. Chap. 9) and again in 1803, (Vol. III. Chap. 50.) The act allowing mill dams to be built on main Licking underwent some modification in 1805, (Vol. III. Chap. 282) —In 1806 a new act was passed on the subject, (Vol. III. Chap. 381.)

WHEREAS it will tend greatly to the ease and convenience of the people of this commonwealth, that the navigable rivers and creeks within the same be kept free and open for the passage of fish, and the transportation of the growth and produce of this country.

Preamble.

SECTION 1. *Be it enacted by the General Assembly,* That any person or persons who shall erect or cause to be erected across and river or creek within this commonwealth, which hath been heretofore or may in future be

Penalty on persons erecting obstructions in water courses.

1792. navigable for boats, any fish-dam, slope, stops, weir or hedges, or any other obstructions to prevent the passage of fish or navigation, or who shall be aiding or assisting in any such obstructions, either by himself or his servants or slaves, shall on conviction thereof, forfeit and pay the sum of two dollars for every twenty-four hours, such obstructions shall remain in such river or creek; which fines and forfeitures shall go to the informer, and shall be recovered on motion before any justice of the peace or court of record, as the case may be, in this commonwealth; provided the party have thirty days previous notice in writing of such motion. *Provided always*, that nothing herein contained shall be so construed as to prevent any person from building dams across any river or creek, for the purpose of working any water grist-mill, or other water-works of public utility, in conformity to an act of the Virginia assembly, entitled "an act concerning mill-dams and other obstructions of water courses."

How recover-
ble.
Proviso.
Commence-
ment.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER XLIX.

An ACT making civil list Warrants receivable in Taxes.

Approved December 18, 1792.

BE it enacted by the General Assembly, That all warrants granted by the auditor to the members of the assembly, their officers, and those granted for the necessary expences attending the sessions, the officers of civil government, including warrants that may be granted to the late judges of the Kentucky district court, and their officers since the first day of June last, members of the late convention and their officers, electors, keepers of the public jail, venire men, and all certificates granted by the governor to the auditor for articles necessary for the use of his office, and warrants issued for military services shall, and the same are hereby made receivable in payment of the public taxes within this state.

I. YEAR OF THE COMMONWEALTH.

123

CHAPTER L.

1792

An ACT to appoint Commissioners for the division of Lands.

Approved December 19, 1792.

This act was amended in 1793, (Chap. 105) and in 1794, (Chap. 166)—In 1795, (Chap. 188)—in 1797 an act was passed to reduce into one the several acts for the conveyance and division of land, (Chap. 317)—This was amended in 1802, (Vol. III. Chap. 12)—and in 1807, (Vol. III. Chap. 453)

WHEREAS many inconveniences may arise to the citizens of this state, and great injuries sustained not only to individuals, but likewise to the commonwealth, by lands lying undivided held in conjunction with non-residents, and such non-residents not having agents in this state to attend to such division; for remedy whereof,

Preamble.

SECTION 1. *Be it enacted by the General Assembly,* That if the owners of lands within this state, who are non-residents, do not attend to have the same divided, where the same is held in conjunction with citizens of this commonwealth, or with other non-residents where such non-residents may apply by themselves or agents to have the same divided, or do not appoint agents to make such division within one year from the passage hereof, the courts of the several counties within this state, shall appoint six commissioners in each county, who, or any two of them, shall when called upon for that purpose by the citizens of this commonwealth, or the owners of land who are non-residents or their agents, attend and make such division agreeable to the contract entered into by the parties; for which such commissioners shall receive six shillings per day each, whilst in service, at the joint expence of the parties, to be paid in the first instance by those employing them; and such commissioners shall make return of such land by them so divided, with the quantity and names of the parties concerned, and by whom called upon to do the business, to the county court of the county where such land may lie, to be therein recorded. *Nevertheless,* nothing herein contained shall prevent a re-division from taking place, provided the first is found not to be equal. *Provided also,* That such re-division shall be made within two years thereafter, and so as not to affect any improvements that may be made in consequence of the first division.

County court to appoint commissioners.

Their compensation.

Commissioners to make return to the county court.

Re-division.

SEC. 2. And where no division can be had in any land

1792.

held in conjunction, it shall be lawful for either party to enter his proportion of such land with the commissioners and pay the tax thereon, which shall save so much of the said land from forfeiture.

Act to be published.

SEC. 3. And the governor is requested to make this act, or so much thereof as may be thought necessary, known throughout the United States.

CHAPTER LI.

An ACT for regulating the fees of County Court Justices.

Approved, December 17th, 1792.

Vide the prelection to Chapter 27, ante.

Preamble.

SECTION 1. WHEREAS, the allowances heretofore made to the county court justices, are inadequate to their services :

Justices to be allowed fees. By whom paid and how collected. What fees and for what services.

*BE it therefore enacted by the general assembly, That the following allowances, shall be made to the justices of the county courts in each county to be paid by the party, at whose request the business shall be done, and which shall be taxed in the bill of costs and collected by the sheriff or constable in like manner, as other debts or executions are or ought to be collected, and accounted for ; for issuing a warrant for debt nine pence ; for a summons for a witness in any case six pence ; for judgment one shilling ; for recording judgment and filing papers one shilling ; for issuing execution and recording the return one shilling ; for a certificate of an oath nine pence ; for posting a stray one shilling ; for issuing an attachment one shilling ; taking bond one shilling and six pence ; for issuing a summons against a garnishee one shilling ; for examining a garnishee and taking schedule of effects one shilling ; for an order of sale on an attachment one shilling ; for a copy of a judgment and other papers relative thereto, one shilling and six pence ; for a peace or search warrant one shilling and three pence ; for attending to take depositions or on an arbitration four shillings for each day ; for taking special bail one shilling and six pence ; for a warrant to apprehend a felon one shilling and three pence ; for a commitment one shilling and three pence. *Provided always,* That no justice shall be entitled to any fee or fees for any process issued in a*

Proviso.

criminal prosecution before the same can be collected of the persons charged if convicted. For certifying a power of attorney or any other instrument of writing one shilling; for examining a run-away slave and certificate thereof one shilling and three pence; for a hue and cry and escape warrant one shilling and three pence; for retaking recognizance one shilling and three pence.

1792.

SEC. 2. *And be it further enacted*, That each justice shall from time to time, keep a fair record of all his proceedings in a book to be by him kept for that purpose; and no justice shall tax in the bill of costs any fee for more than three summonses for witnesses to each party in any one suit.

Justices to keep a record.

No fee for more than 3 witnesses to one suit.

SEC. 3. *And be it further enacted*, That the act passed last session entitled an act regulating the fees of county justices," shall be, and the same is hereby repealed.

Repealing clause.

SEC. 4. And this act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER LII.

An ACT for establishing the town of Mount-Sterling, in the county of Clarke.

Approved, December 17th, 1792.

SECTION 1. WHEREAS, it is represented that if a town was established on Little Mountain Creek, on the lands of Enoch Smith, Hugh Forbes, John Judy and Samuel Spurgin, who have consented thereto, it would operate to public utility:

Preamble.

BE it therefore enacted by the general assembly, That six hundred and forty acres, the property of the said Enoch Smith, Hugh Forbes, John Judy and Samuel Spurgin, on small Mountain creek, beginning at a cherry tree and honey locust, corner to Enoch Smith's pre-emption, and extending north five degrees, east three hundred and twenty poles to a stake; thence south eighty-five degrees east, crossing a creek three hundred and twenty poles to a stake; thence south five degrees west three hundred and twenty poles to a stake; thence north eighty-five degrees west, three hundred and twenty poles to the beginning—to be vested in Enoch Smith, Samuel Dowery, William Meteer, Cornelius Ringo, Aaron Hall, Robert Walker and Simon Adams, gentlemen, trustees,

Town established.

Boundaries.

Certain persons appointed trustees.

1792.

Their powers
and duties.

Rights reserved

and established a town by the name of Mount Sterling. The said trustees or a majority of them shall proceed to lay off the same in convenient lots and streets, and sell the lots from time to time as they may judge proper, upon reasonable credit, giving as public notice of the time and place of such sale as they may conceive the nature of the case may require, taking bond with security for the payment of the purchase money, which bond shall be assigned to the original proprietors in proportion to the quantity of land given up by each of them. The said trustees shall execute deeds of conveyance for the lots to the purchasers, to make such rules and orders for the regular building of houses thereon as to them shall seem best, and to settle and determine disputes about the bounds of said lott; saving and reserving to all and every person or persons, bodies politic and corporate any right and title either at law or equity in and to the land aforesaid as if this act had not been made.

CHAPTER LIII.

An ACT to amend the act establishing a Town at Woodford Court-House.

Approved, December 17th, 1792.

Preamble.

WHEREAS, an act passed last session of assembly establishing a town at Woodford Court-House, and doubts have arisen whether the inhabitants of said town, who have made improvements on their lots, can hold the same without paying the price that such improvements are now worth exclusive of the lots. :

Purchasers
shall not pay
for their im-
provements.

SECTION 1. *Be it enacted therefore by the general assembly,* That all persons who have improved any lot or lots shall hold the same, without paying any consideration for their improvements and shall only be subject to pay the value of such lot or lots, which value shall be fixed by the trustees or a majority of them, at any time after the adjacent lots are sold.

Powers given
to trustees.

SEC. 2. The trustees shall have full power to point out and lay off the two acres allotted for the court-house and other public buildings as soon as possible, and to make any other regulations and alterations in the plan of the town they may think right and proper, but shall not make any alteration of those lots that are improved so as

to injure the improvements; and the commissioners appointed last session of assembly are fully empowered to sell the whole of the lots laid off in said town, or any part thereof, which they may think proper, except those which are improved, and also the balance of the lots to make up one hundred acres of land whenever the trustees may think proper to have the same laid off, and that the said commissioners shall receive for their services for selling the lots and collecting the money, five per cent. on the whole amount, and the surveyor's fees for laying off the lots; and they shall be empowered to sell the lots on twelve months credit and pay the money to the heir when he shall arrive at age, with interest.

1792.

Commissioners
to sell lots.

Compensation.

SEC. 3. *And be it further enacted*, That the trustees are not, in any case, to sell the lots or receive the money.

CHAPTER LIV.

An ACT to amend an act regulating the Town of Lexington.

Approved, December 17th, 1792.

SECTION 1. *BE it enacted by the general assembly*, That the election of trustees for the town of Lexington, shall annually be held on the first Saturday in January, under the same regulations and exceptions as is directed by the act entitled "an act for regulating the town of Lexington," except that instead of the sheriff holding the election and making return of the persons elected to the clerk of the court, all elections for any trustees for said town, shall be held by one of the late or then acting trustees, to be appointed by their board for that purpose. Ten days previous notice thereof shall be advertised in the most public places in said town, by the chairman of the late, or of the then acting trustees, and the return of the person or persons so elected, shall be made to the clerk of the said board, which shall be recorded in their books.

Election of
trustees.

SEC. 2. *And be it further enacted*, That all deeds, conveyances, sales and contracts made to or for any lot or lots in said town by a majority of any trustees heretofore in office, shall be good and valid in law. And so much of the said recited act as comes within the purview of this act shall be, and the same is hereby repealed.

Deeds made by
former trustees
valid.Repealing
clause.

SEC. 3. This act shall commence and be in force from and after the passage thereof.

Commence-
ment.

1792.

CHAPTER LV.

An ACT subjecting Lands to the payment of Debts.

Approved, December 17th, 1792.

Some of the provisions of this act were incorporated in the general execution law of 1796 -- It was amended by an act of 1797, (Chap 308) which act was amended by one passed in 1799, (Vol. II. Chap 217.) The guarded and cautious phraseology of this act favors an opinion that the legislature intended the legal mode of divesting a man of his freehold compulsively for the payment of his debts should be *unique*; if so, the directory part of the law, must be strictly pursued, and no part of it be exchanged for any thing else under the name of an equivalent act.

Whoever drafted this act seems to have had in view an act of 1787, (chap. 40) entitled an act for the more speedy recovery of debts due to this commonwealth.

Besides the acts above referred to, the reader will do well to connect with this an act of 1793 (chap. 125) and the amendment thereto, passed in 1794 (chap. 174.)

The case of *Thomas vs. Marshall*, spring term, 1805, directly involved the question whether equitable rights to land were liable to execution under these acts -- the court decided that lands could not be sold under execution, unless the defendant had such an interest in them, as would authorise the sale of goods at common law. That all these acts of assembly on this subject applied to legal rights only, and not to contracts for land or the land described in such contracts. But they declare that an entry or survey give such an inchoate legal right, as is subject to execution.

Lands subject
to the payment
of debts.

SECTION 1. *BE it enacted by the general assembly,* That lands, tenements and hereditaments, shall and may by virtue of writs of *fiери facias*, be taken and sold in satisfaction of all judgments in a manner hereinafter prescribed.

Joint actions
may be brought
against executors,
&c of any
decedent.

SEC. 2. The same actions which will lie against executors or administrators may be brought jointly against them, and the heirs and devisees of the dead person or both, and shall not be delayed for the non-age of any of the parties.

How execution
to issue.

SEC. 3. The clerk from whose office a writ of *fiери facias* shall issue upon a judgment against the party convict, or against the executors or administrators and his heirs and devisees, shall after the words "we command you that of the," leave out the words "goods and chattels," immediately following them, and instead of the latter insert the word "estate," and by virtue of such writ, the officer to whom it shall be directed shall and may in the manner hereinafter prescribed, make the debt or damages and costs recovered, first of the goods and chattels (exclusive of slaves, and if there be no such goods and chattels,) or not sufficient found in his bailiwick, then of the slaves, and if there be none or not sufficient found

In what manner
sheriff to
proceed in
levying execution.

in his bailiwick, lastly of the lands, tenements and hereditaments, in possession, reversion or remainder, or so much thereof in one or more entire parcels as shall be sufficient, and such part as the owner shall direct if he thinks proper.

1792.

SEC. 4. Every writ of *fiery facias* shall bind the property, of the lands, tenements and hereditaments from the time it shall be delivered to the officer, who shall without fee endorse on every such writ the day and time of day when he received the same; when the goods and chattels taken in execution by virtue of a *fiery facias*, shall not be sufficient to satisfy the debt, damages and costs, the sheriff or other officer shall give public notice at the court-house of his county on the next court-day after the seizure, and moreover shall give notice to the owner if he be in the county, or otherwise to his agent if any such be known, and at some time appointed in the notice not less than ten nor more than twenty days from the court day on which notice is first given, the lands, tenements and hereditaments shall be exposed to sale by auction on the premises, if in a settled part of the country, or at such other place in the settled parts of the country as the owner shall by writing under his hand delivered to the officer direct.

Lands, &c. bound from the delivery of the execution to the sheriff.

Sheriff's duty where goods & chattels are not sufficient.

Lands where exposed to sale.

SEC. 5. But if the owner shall refuse or neglect to point out some place within the settlement at which the sale may be made, then the sheriff shall proceed to make sale of the land at the court-house of the county wherein the land shall lie.

Sheriff to sell land at the court house where the owner neglects to appoint a place.

SEC. 6. If the party against whom a judgment shall be entered have several parcels of land which lie in one and the same county, he or his agent may by writing under his hand at any time before the day of sale require the sheriff or officer to whom a writ of *fiery facias* upon the judgment shall be directed to make the debt or damages and costs of such of the said parcels as the owner or his agent shall think proper, and if the parcels be in different counties, the clerk shall and may at the like request in writing, direct the *fiery facias* to the sheriff or other officer of any county which the party or his agent (making oath or solemn affirmation that he hath land there) shall particularly mention, at any time before the writ shall be delivered to the officer, and if the debt or damages and costs be made of any other parcel of land, or

Mode of proceeding where debtor has several parcels of land in the same county.

Where lands are in different counties.

What sales void.

1792.

Proceedings
when land will
not sell for 3
fourths of its
value.

Estate how re-
covered.

No sheriff to
purchase any
lands, &c.

In all sales the
sheriff to convey
by deed.

of land lying in any other county than that mentioned in such written requisition, the sale of such other parcel or of the land in such other county, shall be void. If the owner shall not pay the debt or damages and costs before or at the day of sale, the sheriff or officer shall proceed to sell the lands, tenements and hereditaments, or such estate and interest as the party convict shall have therein, or so much thereof as will be sufficient, laid off in one or more entire parcels if it may be done in such place and manner as the owner or his agent if he thinks proper shall direct, for ready money or tobacco as the demand shall be, and the fees; but if the estate cannot be sold for three-fourths of the value thereof in the opinion of the commissioners appointed to value property pursuant to an act entitled "an act directing the mode of proceeding under certain executions," it shall and may be lawful for the debtor or debtors, or any of them to enter into bond and sufficient securities to be approved by the valuers aforesaid, to pay the money or tobacco for which execution was so served, and all costs with lawful interest for the same to such creditor within three months. And on such bond being given the sheriff or other officer shall restore to such debtor the estate so taken, and when no bond and security shall be offered by the debtor or any person for him, and the estate taken in execution cannot in the opinion of the valuers aforesaid, be sold for three fourths of its value at least, the sheriff or other officer, shall set up and sell the same for money or tobacco, as the case may be, to be paid at the end of three months, and shall take bond of the buyer or buyers with one or more securities, to pay the same accordingly with interest to such creditor. No sheriff, under sheriff, or other officer, shall buy or bid for any lands, tenements or hereditaments which he or his principal or deputy shall expose to sale by virtue of any writ of *fiere facias*, and the property of any such thing so bought by him or by any other to his use, shall not be thereby changed, but the same be recovered by the former owners, or be made subject to the demands of any of his creditors, unless it shall before suit brought for that purpose, have been sold with good faith and for valuable consideration, to one who had not notice that it had been bought in manner aforesaid. In all sales of lands by virtue of an execution the sheriff or other officer shall convey the same to the purchaser in writ-

I. YEAR OF THE COMMONWEALTH.

131

ting, indented, sealed and recorded as the law directs for other conveyances of land, which deeds shall recite the execution, purchase and consideration, and shall be effectual for passing to the purchaser all the estate and interest which the debtor had and might lawfully part with in the lands.

1792.

SEC. 7. In every bond to be taken pursuant to this act for the payment of the debt, damages or costs by the debtor or by the purchasers on the sale upon credit, it shall be mentioned on what occasion the same was taken, and such bond shall have the force of a judgment and be also assignable. The sheriff or other officer taking such bond shall deliver the same to the creditor or his attorney, or return it to the office of the clerk of the court whence the execution issued, there to be safely kept until demanded by the creditor or his attorney, and if the money or tobacco shall not be paid according to the condition of any such bond, it shall be lawful for the creditor, his attorney or assignee to lodge the same with an affidavit, that the money or tobacco for which such bond was given or part thereof, is still due, with the clerk of the court from whence the execution issued, and such clerk shall and may thereupon issue an execution for so much as shall appear from the bond and affidavit to be still due, and on such new execution the clerk shall indorse that no security is to be taken. And the sheriff or officer shall proceed to levy the same immediately, first selling the estate of the principal obligor if any can be found, but not taking security for payment at a future day, or selling on credit as aforesaid; *Provided*, that if on return of such execution the debtor can prove the payment of the money for which such execution was levied, either to the assignee or to the original obligee or his attorney before notice of such assignment as the case may be, it shall and may be lawful for the court to quash such execution or give such other judgment therein as to them shall seem right, and the person in whose name such execution issued, shall moreover be liable to the action of such debtor for damages.

Bonds how taken, and to be assignable.

Sheriff to return bond to the creditor or clerk's office. In what manner execution is to issue thereon

Clerk's duty therein.

How sheriff is to proceed on such execution

Execution may be quashed on certain conditions.

SEC. 8. *And be it further enacted*, That where any bond directed or permitted to be given by this act, shall be assigned and execution issued thereon against the original obligor or obligors, and on such execution there shall be a return by the sheriff or other officer that there

1792. <sup>Execution may
issue against as-
signors of bonds</sup> was no estate or not sufficient estate of the obligor or obligors to make the debt and costs, it shall be lawful for the clerk who issued such execution to issue a second execution against the assignor or assignors of such bond for the debt mentioned therein, or such part thereof as shall appear to be still due, on which execution there shall be similar proceedings to those in any execution against the original obligors.

<sup>Penalty on the
sheriff failing to
deliver or re-
turn bond as
aforesaid.</sup> SEC. 9. If the sheriff or other officer shall fail to deliver or return as aforesaid any bond taken by virtue of this act within thirty days from the date thereof, he shall be liable to the same penalty for every month of such failure, to be recovered in the same manner as is directed by law against a sheriff or other officer failing to return an execution, saving and reserving to the widows all right of dower which they may have in any of the said lands, tenements or hereditaments.

CHAPTER LVI.

An ACT prescribing the mode of proceeding in cases of Impeachment.

Approved December 17, 1792.

<sup>Mode of pro-
ceeding in im-
peachments.</sup> SECTION 1. *BE it enacted by the general assembly,* That when any person shall desire that the governor or any other civil officer be impeached for any misdemeanor in office, such person shall state in a petition to the house of representatives the facts upon which such impeachment is proposed to be founded, which petition shall be signed by such person, in the presence of two subscribing witnesses, accompanied with proper affidavits to support the truth of the facts therein alledged, and shall conclude with praying that such governor or other officer by name, may be impeached; which said petition shall, if received, be referred to a committee selected for that purpose, who shall have power to send for persons, papers and records for their information, which said committee shall take the whole matter under their consideration and report their opinion thereon to the house, who shall immediately proceed to consider the same; and if the house shall resolve that an impeachment ought to take place, it shall nominate one or more persons to manage and prosecute the same, who shall draw up the said impeachment by charging the facts stated in the said pe-

tion as direct allegations against the person accused, and conclude with saying, upon these charges the said governor, or officer, (naming him) stands impeached by the house of representatives; to which impeachment such person or persons so named by the house, shall put his or their name or names, and thereupon lodge the same with the clerk of the senate, who shall immediately give notice thereof to the person impeached and issue a summons in proper form to be directed by the senate, which shall contain a copy of the impeachment under the teste of the clerk, and returnable to such day as the senate by their order shall direct for the trial or examination of said impeachment; which summons shall be executed, by delivering a complete transcript thereof to the party accused, or leaving the same at his usual place of abode, with some free person concerned in his business; and the said summons shall be executed and returned by the sergeant-at-arms of the senate within such time and in such manner as the senate shall by their order designate for each purpose respectively. The persons petitioning shall be notified of the day of trial, or examination of said impeachment by a summons to be issued and executed as in the case of the accused; and also the person impeached shall attend the senate in obedience to such summons, whereupon, and from time to time, the senate shall make such order on the impeached to answer, and on those who manage the said impeachment to take issue thereon and bring the same to a hearing as to them shall seem reasonable. And every fact put in issue that is not agreed to by the person impeached or his counsel, shall be tried by a jury, qualified as is directed by law in the case of grand juries, to be summoned by the sheriff of the county in which the general assembly shall be then sitting; and every juror so summoned and failing to attend, shall be fined at the discretion of the senate, not exceeding forty shillings. It shall be the duty of the person petitioning to procure the attendance of witnesses, or other testimony to support the impeachment, for which purpose he shall have from the clerk of the senate the proper process, to be issued and executed as in the manner herein before directed. The person impeached, shall also have similar process to compel the attendance of witnesses, or procuring testimony on his part, and subject to the like regulations of the senate. Any witnesses sum-

1792.

How the person petitioning to be notified of trial, &c.
Mode proceeding to trial.

Facts to be ascertained by jury.

By whom summoned.

Penalty on their failure to attend.

Duty of petitioning party.

1792.
Penalty on wit-
nesses failing to
attend.
Their priviled.
ges.
Judgment and
proceedings of
the senate to
appear on their
journals.

moned, and failing to attend, shall be subject to the same pains and penalties as witnesses failing to attend the court of appeals; and attending, shall have the same privileges, going to, attending the senate and returning home; and also the same allowance as in the case above mentioned. The judgment and whole proceedings of the senate in cases of impeachment, shall appear upon their journals; and the judgment, if in favor of the person impeached, shall instantly restore him to the right of exercising his office; if against him, shall effectually vacate it.

Senators to
take oath.

The form.

SEC. 2. *And be it further enacted*, That before the senate shall proceed to trial on any impeachment, the speaker and members respectively, shall take the following oath or affirmation, viz. "I A. B. do solemnly swear or affirm, (as the case may be) that I will faithfully and impartially declare my judgment in the case of impeachment now to be tried, according to the constitution and laws of this commonwealth."

Costs how re-
covered.

Execution to
issue therefor.

How executed
and returned.

Commence-
ment.

SEC. 3. *And be it further enacted*, That if the person impeached, shall be acquitted by the judgment of the senate, he shall recover such costs against the prosecutors or petitioning party, to be taxed by the clerk of the senate as has been heretofore allowed by law in suits in the supreme court for the district of Kentucky; and if the party impeached be found guilty, he shall pay to the prosecutor or petitioner his costs, to be taxed in the same manner; for which costs in either case, an execution shall be issued by the clerk of the senate, and levied on the party against whom the same shall be directed, by the sheriff of the county in which he resides, returnable within ninety days from the date thereof.

SEC. 4. This act shall commence and be in force from and after the passage thereof.

CHAPTER LVII.

An ACT to amend an act concerning elections.

Approved December 18, 1792.

Vide the observations on chap. 6, ante.

CHAPTER LVIII.

An ACT prescribing the mode of appointing Inspectors of Tobacco, Hemp and Flour.

Approved December 18, 1792.

In 1794 an act was passed establishing an inspection of hemp and flour, in which no allusion is made to this act (chap. 168)—in 1795 the act last

mentioned was declared inadequate, and an act passed establishing inspections of hemp and flour, and repealing all acts coming within its purview (chap. 207)—in 1796 the act of 1794 was amended (chap. 257) and by another act of the same session, inspections were established at several places, subject to the general laws on the subject (chap. 253)—in 1797 some additional inspections were established (chap. 291)—at the January session 1798, an act was passed to amend and reduce into one the several acts of assembly for the inspection of tobacco (vol. II. chap. 66.)—This act repealed every act respecting the inspection of tobacco, except some parts of a local law establishing an inspection at the falls of Ohio; at the same session two additional inspections were established by as many acts, (Vol. II. chaps. 81 & 82)—at the November session of 1798, the general act of the preceding session was amended, (Vol. II. chap. 124) which amending act was amended in 1799, (Vol. II. chap. 188)—and at the same session an additional inspection of tobacco, hemp and flour, was established subject to the general laws (Vol. II. chap. 194)—in 1800 two additional inspections were established by several acts, (Vol. II. chaps. 280 & 287)—in 1801 sundry new inspections were established, (Vol. II. chap. 366)—in 1802 inspections of cotton were established, (Vol. III. chap. 13)—and an act passed to amend an act entitled an act for establishing sundry inspections of flour, hemp and tobacco, (Vol. III. chap. 15)—though it is believed that no act of this state was ever so entitled. In 1803 sundry new inspections of hemp, flour and tobacco, were established under particular regulations, (Vol. III. chap. 99)—in 1804 sundry inspections of beef and pork were established, (Vol. III. chap. 252)—and on the same day sundry inspections of flour, hemp and tobacco, (Vol. III. chap. 256)—in 1805 an act was passed to amend the several acts concerning inspections, (Vol. III. chap. 326)—in 1806 an act was passed to repeal in part the several acts concerning inspections of beef and pork, (Vol. III. chap. 331)—and sundry new inspections of flour, hemp and tobacco, were established by two acts of the same session, (Vol. III. chaps. 335 and 344)—*Vide* also, chaps. 422, 429, 443, 513, and 514 of Vol. III. in 1807.

SEC. 1. *BE it enacted by the general assembly*, That there shall be appointed and commissioned as the constitution directs, three fit persons to act as inspectors of tobacco, flour and hemp, at each inspection of these articles; who shall respectively take the oath and perform the duties of their office agreeable to the constitution of this state, and the laws in force at the time of the separation of this state from Virginia; and shall be subject to the same penalties and forfeitures for not performing such duties, as are prescribed in the said laws, and which shall be recoverable in the same manner, as therein mentioned: *Provided*, That the same persons may act as inspectors of both articles, and shall be entitled to receive the fees allowed by law.

SEC. 2. *And be it further enacted*, That the different ware-houses in the county of Clark, shall be in one inspection, and that the ware-house at Cleveland's and Stafford's landing, shall be one other inspection. So much of any law as is contrary hereto, shall be and is hereby repealed.

1792

Inspectors how appointed.

To take oath, &c.
Duties.

Penalties and forfeitures.

Proviso.

1792.

CHAPTER LIX.

An ACT to provide a Seal for this Commonwealth.

Approved December 20, 1792.

BE it enacted by the general assembly, That the governor be empowered and he is hereby required, to provide, at the public charge, a seal for this commonwealth; and procure the same to be engraved with the following device, viz: two friends embracing, with the name of the state over their heads; and round about them, the following motto, "UNITED WE STAND, DIVIDED WE FALL."

CHAPTER LX.

An ACT to provide for the improvement of the breed of Horses.

Approved, December 20, 1792.

Preamble.

WHEREAS, many of the inhabitants of this commonwealth, who keep breeding mares, sustain great damages from stoned horses being suffered to run at large without inclosures, and the breed of horses is much injured thereby; for prevention whereof,

Any person
may take up
any stoned horse
more than one
year old, run-
ning at large.
If not taken a-
way and secu-
red,
may carry the
same before jus-
tice.
Who shall have
the same geld-
ed.
Fee to the geld-
er.
Taker up to
take care of said
horse.

His allowance
therefor.

Proceedings
where the ow-
ner &c. is not
known.

SECTION 1. *Be it enacted by the General Assembly,* That if any stoned horse shall be found running at large out of the inclosed ground of the owner or keeper, more than one year old, it shall and may be lawful for any person to take up such stoned horse, and give notice thereof to the owner or keeper, and if such owner or keeper shall not take away and secure the same, allowing him one day for every fifteen miles he may reside from such taker up, the taker up shall carry the same before the next justice of the peace within the county, and if it appear to such justice that the said stoned horse is more than one year old, he shall issue his warrant to some person skilled in the business to geld such stoned horse, and such person may demand and receive nine shillings for his trouble, to be paid by the taker up, and such taker up shall take care of the horse so gelded, for which he may demand and receive of the owner or keeper, two dollars including the price paid for gelding, and moreover receive six pence per day from such owner or keeper for every day he shall keep such horse after he is gelded; and when the owner or keeper of any stoned horse, so found running at large, is not known, the taker up shall carry the

same before a justice, who shall cause the same to be appraised and dealt with as is by law required in taking up a stray horse, mare or colt of the same age; and moreover for two weeks cause a particular description of such appraisement to be set up at the court-house door or place of holding courts, and most public places in his neighbourhood for two weeks, for which he shall be entitled to the same reward as is allowed in case of taking up any other stray horse, mare or colt; and if no owner appear to prove his property within that time, he may take the same before the next justice of the peace for his county, who shall cause the same to be gelded, as is heretofore directed; and the person gelding such stoned horse shall be allowed the sum of five shillings, to be paid as is heretofore required, and the taker up two dollars for his trouble for curing, and all reasonable charges; and if the owner does not appear and prove his or her property within one year, the property shall be vested in the taker up, nevertheless the former owner may at any time within three years by proving his or her property, recover the valuation money.

1792.

When to carry the horse before the next justice

Who shall have the same gelded.

Fee to the gelder.
Fee to the taker up.

When the property vested in the taker up.

SEC. 2. So much of every act or acts as comes within the purview of this act, shall be and the same is hereby repealed.

Repealing clause.

SEC. 3. This act shall commence and be in force from and after the first day of March next.

Commencement.

CHAPTER LXI.

An ACT concerning Executions, and for the relief of Insolvent Debtors.

Approved, December 20, 1792.

This act was amended by one passed in 1793, (chap. 125)—and by another passed in 1794, (chap. 174)—in 1796 an act was passed to reduce into one the several acts and parts of acts concerning executions, and for the relief of insolvent debtors, (chap. 274)—in 1802 an act was passed concerning executions, (Vol. III, chap. 30.) This is a very extensive department of practical law, and necessarily connects with it all the acts subjecting lands to the payment of debts, most of the acts concerning sheriffs, and an act of 1802, concerning writs of error, (Vol. III, chap. 45)—and one on the same subject passed in 1803, (Vol. III, Chap. 97.)

SECTION 1. *BE it enacted by the general assembly,* Execution may issue against goods, lands, or body of the person convicted. That all persons recovering debt, damages or costs, by the judgment of any court of record, may at their election, prosecute writs of *fieri facias* and *capias ad satisfaci-*

1792.

Not more than
90 days be-
tween the teste
and return of
such writ.

ciendum, within the year for the taking the goods, lands or body of the persons or persons against whom such judgment is obtained, and the several writs shall be issued in the name of the commonwealth, and returnable to the next succeeding court from whence such writ issued, so that there are not more than ninety days between the teste and return day of every such writ; but if the plaintiff in any county court or other inferior court, shall desire an execution to issue returnable at a further day, the clerk shall issue the same accordingly, so as the day of such return be upon a court day within ninety days next after the teste thereof; and all such writs shall be executed by the sheriff or other officer to whom the same may be directed. All writs shall be in the same forms as have been heretofore used and practised.

Proceedings in
case of the
death of the
person execu-
ted.

Proviso:

SEC. 2. *And be it enacted*, That where any person being in prison, charged in execution by reason of any judgment given against him, should happen to die in execution, the party or parties at whose suit, or to whom any person shall stand charged in execution for any debt or damage recovered, his or their executors or administrators may after the death of the person so dying in execution, lawfully sue forth and have new execution against the lands, tenements, goods and chattels of the person so deceased. *Provided always*, That this act shall not extend to give liberty to any person or persons, their executors or administrators, at whose suit any such party shall die in execution, to have or take any new execution against the lands, tenements or hereditaments, goods or chattels of such party dying in execution, which shall at any time after the said judgment or judgments be by him sold *bona fide* for the payment of any of his creditors at whose suit he shall be in execution; and the money paid or secured to be paid to any such creditors, with their privity in discharge of his or their debts or some part thereof.

First writ not
returned and
executed, the
party may take
out new execu-
tion.

Ca. Sa. return-
ed not found.

SEC. 3. *And be it enacted*, That when any writ of execution shall issue, and the party at whose suit the same is issued, shall afterwards desire to take out another writ of execution at his own costs and charges, the clerk may issue the same if the first writ be not returned and executed; and where upon a *capias ad satisfaciendum* the sheriff shall return that the defendant is not found, the clerk may issue a *fiery facias*; and if upon a *fiery facias*

shall return that the party hath no goods, or that only part of the debt is levied, in such case it shall be lawful to issue a *capias ad satisfaciendum* upon the same judgment, and when one judgment is obtained against several defendants, and not otherwise.

1792

Party may take
Fi. Fa. and
vice versa

SEC. 4. And be it further enacted, That no writ of *fieri facias* or other writ of execution shall bind the property of the goods against which such writ is issued forth, but from the time such writ shall be delivered to the sheriff, under sheriff, coroner or other officer to be executed; and for the better manifestation of the said time, such sheriff, coroner or other officer, his deputy or agent, shall upon the receipt of any such writ, without a fee for doing the same, endorse upon the back thereof, the day of the month and year when he received the same; and if two or more writs shall be delivered against the same person in the same day, that which was first delivered shall be first satisfied. And when any sheriff or other officer shall take the goods or chattels of any person whatever by virtue of any writ of *fieri facias*, and the owner of such goods and chattels shall not within twenty days after such taking satisfy the party suing out such writ his debt, damages and costs, such sheriff or officer shall and may lawfully sell by auction the goods and chattels so taken, or so much thereof as shall be sufficient to satisfy the judgment, for the best price that can be had for the same; but shall give notice of the time and place of such sale, at least ten days at the court-house door and at the meeting-house door; and most public places within the county where such goods shall be taken in execution, by advertising the same. *Provided always*, that if the owner of such goods and chattels shall give sufficient security to such sheriff or officer to have the same goods and chattels forthcoming at the time of sale, it shall be lawful for the sheriff or officer to accept such security, and to suffer the said goods and chattels to remain in the possession and at the risque of such debtor, until the time aforesaid; and if then such owner shall tender to the sheriff or officer the debt, damages and costs, for which his goods and chattels were so taken, such sheriff or officer shall accept the same and return the said goods to the owner. *Provided also*, that where any execution shall be served upon the goods or other estate of the debtor, for any debt contracted before the first day

When property
is bound by ex-
ecution.

Sheriff shall en-
dorse the time
of the receipt
of the execu-
tion on the
back thereof.
The writ first
delivered to be
first executed.
Execution not
satisfied within
20 days sheriff
to sell goods,
&c.

Notice of the
sale.

Proviso.

In what cases
may replevy.

1792.

When goods
may be sold on
3 months cre-
dit, &c.

Such bond to
have the force
of a judgment.

Execution may
issue thereon on
10 days notice
given.

On which no
security shall
be taken.

Provided

of February next, if such debtor shall at or before the day of sale, tender sufficient security, approved by the creditor or his agent, to be bound with him, to pay the amount of the judgment on which such execution was granted, and also all costs with lawful interest for the same, to such creditor within three months, then the sheriff or other officer shall return to such debtor the goods or estate so taken; and where no such security shall be offered, and the goods or other things taken in execution, cannot be sold for three fourths of their value at least, in the opinion of the sheriff or other officer, he shall set up and sell the same for the best price that can be had in money, to be paid at the end of three months, and shall take bond of the buyer or buyers, with one or more sufficient securities to pay the same accordingly, with interest, to such creditor. And all and every bond or bonds so taken in pursuance of this act, shall mention that the same was or were entered into for goods or other estate taken in execution and restored to the debtor, and sold to the obligor or obligors, as the case may be, and before the expiration of the time aforesaid, shall be returned by the sheriff or officer taking the same to the office of the clerk of the court from whence the execution issued, there to be safely kept, and shall have the force of a judgment; and if the money shall not be paid according to the condition of any such bond, it shall be lawful for the clerk of the court with whom such bond or bonds may be lodged, upon application of the party to whom the same is payable, to grant an execution thereupon with costs; provided, the obligors have ten days previous notice of such application; and upon such execution, the sheriff or officer shall not take any security for payment of the money at a further day, but shall levy the same immediately; and the clerk shall endorse upon the back of every such execution, that no security is to be taken. *Provided always*, that nothing in this act contained shall be construed to extend to any execution upon any judgment obtained against a sheriff or other collector of levies, or officers' fees, or public revenue, for any debt due to any public creditor, put into his hands to collect; but such execution shall and may be proceeded upon immediately, and no security shall be taken or further time allowed; any thing in this act to the contrary notwithstanding.

SEC. 5. *And be it further enacted,* That no sheriff or other officer, to whom any writ of *fiery facias* shall be directed, shall take in execution any slave or slaves, provided there be shewn to such sheriff or other officer by the defendant or any other person in his behalf, sufficient, either lands, goods or chattels of such defendant, within the settled part of the county, upon which he may levy the debt and costs mentioned in such *fiery facias*; and that no collector of any officers' fees or of the public revenue or county or poor levies, shall seize or make distress upon the slave or slaves of any person for such fees, taxes or levies, if other sufficient distress can be had; and that no sheriff, or other officer, or collector of taxes, fees or levies, shall make or take unreasonable seizures or distresses; and if any sheriff or other officer or collector as aforesaid, shall act contrary hereunto, such sheriff, officer or collector shall be liable to the action of the party grieved, grounded upon this act, wherein the plaintiff shall recover his full costs, although the damages given do not exceed forty shillings.

SEC. 6. Where the body of any person is taken in execution, he shall be released by the sheriff or officer having such person in custody, provided such person give such sheriff or other officer property sufficient to satisfy the debt, damages and costs such debtor may stand charged with. And where the sheriff or other officer may take any negroes or live stock in execution, and the owner does not give security as is by this act required, to be forthcoming for the same at the day of sale, such sheriff or other officer shall have a reasonable allowance for keeping such negroes or live stock, to be adjudged of by the court and paid by such debtor.

SEC. 7. *And be it further enacted,* That if any sheriff or other officer shall make return upon any writ of *fiery facias*, that he hath levied the debt, damages and costs as in such writ is required, or any part thereof, and shall not immediately pay the same to the party to whom the same is payable or his attorney, such party or his attorney shall upon motion to the next succeeding court from whence the execution issued, recover judgement against such sheriff or other officer, for the amount of the money and costs so levied and unpaid by such sheriff or officer, and also the costs of such motion; *Provided,* such sheriff or other officer have ten days previous notice

1792.

Slaves not to be taken in execution if a sufficiency of other property shewn.

Nor for fees or revenue.

Sheriff liable to action.

Property to release the body from execution.

Sheriff's allowance for keeping slaves and stock.

To be adjudged of by the court.

Remedy against the sheriff retaining money levied by execution, &c.

Provide.

1792. of such motion. And if the goods taken by any sheriff or other officer as aforesaid, or any part thereof shall remain in his hands for want of buyers, he shall make return accordingly, and thereupon the writ of *venditioni exponas* shall issue directed to such sheriff or officer according to the form heretofore practised, and such sheriff or officer shall dispose of such goods and chattels in any manner either for ready money or upon credit, as he and the party prosecuting, shall think best.

Venditioni exponas.

Execution may issue to any county where the defendant, his goods, &c. may be found.

SEC. 8. *And be it further enacted*, That where judgments shall be obtained in any court of record, for any debt or damages, and the person against whom such judgment shall be obtained removes himself and his effects, or shall reside out of the limits or jurisdiction of such county, it shall be lawful for the clerk of the court where judgment was given, at the request of the party for whom the same was rendered, to issue any writ of *facias* or *capias ad satisfaciendum*, to direct the same to the sheriff of any county within this state where the defendant or debtor his goods or land may be found; which said sheriff or other officer to whom the same shall be directed is hereby empowered and required to serve and execute the same, and shall make return thereof to the court where the judgment was given.

Prisoner in execution may have the benefit of bounds.

SEC. 9. *And be it further enacted*, That if any person or persons taken or charged in execution, shall enter into bond with good and sufficient security under a reasonable penalty, upon condition he or they shall not depart or go out of the rules or bounds of the prison, to which he or they shall be committed, it shall be lawful for the sheriff or officer in whose custody such prisoner or prisoners shall be, to permit him or them to go out of the prison and return at pleasure.

Insolvent debtors may be discharged from confinement.

SEC. 10. *And for relief of insolvent debtors who shall be taken in execution, and to prevent the long imprisonment of unfortunate people which can be no benefit, but may be rather a disadvantage to their creditors:*

Be it enacted, That if any person or persons now are or hereafter shall be taken or charged in execution, and shall have remained in prison by the space of twenty days it shall be lawful for any two justices of the peace of the county, upon petition of the prisoner or prisoners, by warrant under their hands and seals, to require the sheriff, jailor or keeper of the prison in such county, to bring

the body of such prisoner or prisoners before them at the court-house, on a certain day, together with a list of the several executions with which he may stand charged in the said jail; which warrant every such sheriff, jailor or keeper is hereby commanded to obey; and notice thereof shall be given to the party or parties, his or their executors, administrators or agent at whose suit such prisoner shall be in execution, if living within the county; and such prisoner coming before the justices shall subscribe and deliver in a schedule of his whole estate and take the following oath: "I, A. B. do in the presence of Almighty God, solemnly swear or affirm (as the case may be) profess and declare, that the schedule now delivered and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery of all the estate, goods and effects unto me in any wise belonging, and such debts as are to me owing or to any person in trust for me, and of all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or to my use, or to any person or persons in trust for me; and that I or any person or persons in trust for me, have no lands, money, stock or any other estate real or personal, in possession, reversion or remainder, of the value of the debt or debts with which I am charged in execution; and that I have not directly or indirectly sold, lessened or otherwise disposed in trust or concealed, all or any part of my lands, money, goods, stock, debts, securities, contracts or estate, whereby to secure the same to receive or expect any profit or advantage thereof, or to defraud or deceive any creditor or creditors to whom I am indebted in any wise however:" which schedule being so subscribed in the presence of the justices, shall be lodged with the clerk of the court, for the information of the creditors of such prisoner.

SEC. 11. *And be it further enacted*, That the lands, tenements and hereditaments which shall be contained in such schedule for such use, right, interest or title, as such prisoner or prisoners then shall have in the same, which he may lawfully depart withal, reserving to the wife of such debtor, her right of dower therein; and also all goods and chattels whatsoever in such schedule contained, shall be vested in the sheriff of the county wherein such lands, tenements, hereditaments, goods or chat-

1792.

They shall subscribe and deliver in a schedule of their estate, and take an oath.
The oath.

Schedule to be lodged with clerk of the court.

Lands, goods, &c. in schedule (reserving the wife's dower) to be vested in the sheriff, who shall sell the same.

1792.

The money arising from such sale to be paid to the creditor. Saving to such prisoner his necessary apparel, utensils of trade and arms, &c. How the prisoner to be set at liberty.

Which shall indemnify the sheriff against escapes or actions.

If such person shall afterwards acquire property, the creditor may sue out *scieri facias* to have execution thereon.

Debtor unable to pay his prison fees, they shall be discharged for the first 20 days by the county.

Afterwards by the creditor.

Creditor to give security for or pay such fees, or the prisoner may be discharged.

tels shall lie or be found ; and such sheriff is hereby authorised, empowered and required to sell and convey the same to any person or persons whatsoever, for the best price that can be got for the same, and the money arising by such sale, shall be by such sheriff or officer, paid to the creditor or creditors at whose suit such prisoner or prisoners shall be imprisoned ; saving to every such prisoner his necessary apparel and utensils of trade, and also such of his arms and accoutrements, as every militia man is required to keep by the militia laws ; and after delivering in such schedule and taking the oath aforesaid, it shall be lawful for the said justices by their order, to command the sheriff, jailor, or keeper of the prison within the county forthwith to set at liberty such prisoner ; which order shall be according obeyed, and shall be sufficient to discharge and indemnify such sheriff or other officer against escape or escapes, action or actions whatever, which shall or may be brought or prosecuted against him or them by reason thereof ; and if any action shall be commenced against any sheriff or officer for performing his duty in pursuance of this act, he may plead the general issue, and give this act in evidence ; and notwithstanding such discharge, it shall be lawful for any creditor or creditors at whose suit such insolvent prisoner was imprisoned, at any time afterwards to sue out a writ of *scieri facias*, to have execution against the lands or tenements, goods or chattels which such insolvent person shall thereafter acquire or be possessed of.

SEC. 2. *And be it further enacted*, That where any person now is, or hereafter shall be committed for any debt or damages whatsoever, and shall not be able to satisfy and pay his or her ordinary prison fees, such of the said fees as shall become due for the first twenty days imprisonment, shall be discharged by the county, and the sheriff or jailor may demand and recover, of the party or parties at whose suit such insolvent person shall be imprisoned, all such fees as shall become due after the expiration of the said twenty days, until the creditor shall agree to release such prisoner. And if the creditor upon notice thereof given him or her, his or her attorney or agent, shall refuse to give security to the sheriff or jailor for payment of such prison fees, or shall fail to pay the same when demanded, it shall and may be lawful for the sheriff or jailor to discharge such debtor out of prison.

I. YEAR OF THE COMMONWEALTH.

Provided nevertheless, that such insolvent prisoner shall be afterwards liable to the action of the creditor to recover such fees, and such creditor shall and may notwithstanding his consent to releasing such prisoner, at any time afterwards sue out a *scieri facias* to have a new execution against the lands and tenements, goods and chattels of such prisoner, in case he or she shall afterwards become possessed of any.

1792.

SEC. 13. Every act or acts which comes within the purview of this act, shall be, and the same is hereby repealed.

Repealing clause.

SEC. 14. This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER LXII.

An act prescribing the duties of Constables, and regulating their fees.

Approved December 20, 1792.

At the January session 1793, an act was passed to reduce into one the several acts prescribing the duties of constables, (Vol. II. Chap. 10.) The constitution of 1799, vested the county courts with the power of appointing constables; which power was put into operation by an act passed at the November session 1799, (Vol. II. Chap. 200)—in 1803 an act was passed *inter alia* to amend and reduce into one the several acts concerning constables, (Vol. III. Chap. 101.) This act was amended in 1804, (Vol. III. Chap. 166)—which last act was amended in 1806, (Vol. III. Chap. 330.)

SEC. 1. WHEREAS, the fees heretofore allowed to constables are inadequate to their services:

Preamble.

BE it therefore enacted by the general assembly, That the constables shall be allowed the following fees, to be paid by the person or persons at whose request the business shall be done: For serving a warrant for debt one shilling and six pence; summoning a witness in any case nine pence; for serving a peace or search warrant two shillings; for levying an attachment one shilling and six pence; summoning a garnishee nine pence; for carrying a criminal to jail two pence per mile in going to and returning.

Constables fees

SEC. 2. *And be it further enacted*, That every person being appointed a constable and accepting the same, shall in his county court enter into bond with good and sufficient securities, in the penalty of five hundred dollars, with the following conditions, to wit: "The condition of

To give bond.

Condition.

NOVEMBER SESSION.

1792.

the above obligation is such, that if the above bound A. B. as constable of the county of _____ shall by himself well and truly collect all officer's fees and dues put into his hands to collect, and account for and pay the same at such time, and in such manner as is directed by law, shall also well and truly execute, and due returns make of all process and precepts to him directed, or to him delivered, and pay and satisfy all sums of money and tobacco by him received, upon any such process or precepts to the person or persons entitled thereto, and in all other things shall truly and faithfully execute and perform the said office of constable according to law, during the time of his continuance therein, then the above obligation to be void, otherwise to remain in full force ;" which bond shall be payable to the governor for the time being and his successors ; and in their name or that of his successors, any person injured by a breach of the condition, may at his costs prosecute a suit thereon and recover damages, and be liable to pay costs to the defendant if a verdict or judgment pass in his favor, or the suit be discontinued ; and such bond shall not become void upon the first recovery or dismissal of a first or other suit, but may be put in suit from time to time by and at the costs of any other person injured, until the whole penalty be recovered in such damages ; and that any officer or creditor upon such bond, may by motion to the county court against the obligor or obligors giving them ten days notice of such motion, recover judgment for all monies and tobacco collected by such constable, and accounted for to the person or persons respectively entitled to receive them.

May be put in
suit.

When void.

To take oath.

Form.

SEC. 3. *And be it further enacted,* That every person before he enters upon his office of a constable shall in open court give assurance of fidelity to the commonwealth in the form prescribed by the constitution, and also take the following oath of office, to wit : " I, A. B. do swear (or affirm, as the case may be) that I will do right as well to poor as rich in all things belonging to my office of constable, that I will do no wrong to any man for any gift, reward or promise, nor for favor or hatred, and that in all other things I will faithfully and impartially execute the duties of my said office according to the best of my skill and power, so help me God." No constable shall return upon any precept to him di-

I. YEAR OF THE COMMONWEALTH.

147

rected, that the defendant is not found within his bailiwick, unless such constable shall have been actually at the place of residence of such defendant, and not finding him shall have left a true copy of the precept; or unless such defendant's place of residence is unknown to such constable: and if the defendant cannot be served with the precept by the constable and shall be a known inhabitant of any other county, the constable shall return the truth of the case and thereupon the process as to such defendant shall abate.

1792.
His duty where the defendant is not found.

SEC. 4. *And be it further enacted,* That each constable for selling the property, or for collecting the money or tobacco, by virtue of any execution where the sum is under twenty shillings, shall be allowed one shilling and six pence, and where the sum exceeds twenty shillings, five per centum; all fees chargeable by this act shall in the first instance be paid by the person or persons for whom the services is done, which shall be taxed in the bill of costs by the justices, and charged to the person or persons who shall be cast in the suit, except in cases of persons charged with felony, when the expences shall be paid by the county and repaid by the public, where the offender's estate shall not be sufficient to pay the same.

Fees on execution.

To whom fees charged.

Exception.

SEC. 5. When any property is taken by the constable by virtue of his office, he may, on the person or persons from whom such property shall be taken, giving bond and sufficient security for the delivery of such property at the day of sale, suffer it to remain in the possession of the debtor; but when such person or persons shall not be able or shall refuse to give such security, in either case, and the property shall consist of live stock, the constable shall take care of the same, and allowances shall be made him out of the money arising from the sale of such property, to be judged of by the justices to whom execution is returned, and the constable shall be allowed one shilling and three pence for taking such bond, and there shall not be more than fifteen days between the constable's executing and selling any property taken by virtue of an execution; the constable shall give ten days notice at least of such sale by advertising at the most public place or places in the neighborhood, of the time and place of such sale, where the person or persons may reside from whom such property is taken.

Debtor may give bond.

Allowance to constable for keeping perishable property.

Time between levying execution and day of sale.

To be advertised.

SEC. 6. *And be it further enacted,* That where a bond

1792
Proceedings on
bonds for deli-
very of proper-
ty.

Repealing
clause.

Commence-
ment.

shall be given for the delivery of property, and the same shall not be delivered at the day of sale agreeable to the tenor of said bond, the constable shall give five days previous notice to the principal or security or both, in person or in writing, left at his or their place of abode, that he will move against him or them (naming the justices and the particular day) for judgment for the amount of the debt and costs; and on obtaining such judgment, the constable shall proceed to execute and sell accordingly. And that so much of every act or acts as comes within the purview of this act shall be and the same is hereby repealed.

SEC. 7. This act shall commence and be in force from and after the passage thereof.

CHAPTER LXIII.

An ACT to appoint Commissioners for the conveyance of certain Lands.

Approved, December 20, 1792.

Vide the prelection on Chap. 50, ante.

WHEREAS many persons die intestate, having previous to their death made sales of lands without executing deeds of conveyance therefor; for which if suits in law or equity should be instituted, by the persons who in consequence of any contract or agreement possessed an equitable claim in such lands, it would tend greatly to the injury of such decedent; for remedy whereof,

Inspectors how
appointed.

To take oath,
&c.
Duties.

Penalties and
forfeitures.

Proviso.

SECTION 1. *BE it enacted by the general assembly,* That where any person has or shall hereafter die intestate, having previous to his or her death made sales of any lands, and has not executed deeds of conveyance, it shall and may be lawful for the administrators or legal representatives of such decedent or decedents, to apply to the court of quarter sessions or any superior court to appoint commissioners to convey such land, having first given notice to the person or persons to whom such land is to be conveyed, of such intended motion; the court shall enquire into the circumstances, and if it appear to such court just and reasonable, they shall appoint six commissioners for the before mentioned purposes, and such commissioners or any two of them, shall be vested with full power and authority to make, and execute deeds of conveyance to such person or per-

sons, as the said court shall direct; and the land so conveyed, shall be vested in the grantee or grantees, in the same manner it would have been, provided such conveyance had been made by the decedent in his life time; *Saving nevertheless*, to any person or persons other than the legal representatives or heir at law of the said decedent, any equitable right or claim they may have in such lands.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

1792.

CHAPTER LXIV.

An ACT for the appointment of Justices of the Peace in the several Counties of this State.

Approved, December 20, 1792.

SECTION 1. *BE it enacted by the General Assembly*, That there shall be justices of the peace appointed in the several counties hereafter mentioned, in the following numbers and proportions, including those who reside within the present boundaries of the several counties; that is to say, for the county of Mason, ten; for the county of Bourbon, twelve; for the county of Fayette, fourteen; for the county of Woodford, twelve; for the county of Scott, eleven; for the county of Shelby, eight; for the county of Jefferson, ten; for the county of Nelson, fourteen; for the county of Washington, eleven; for the county of Mercer, fourteen; for the county of Lincoln, eleven; for the county of Madison, twelve; for the county of Logan, six; for the county of Clarke, ten; for the county of Green, six; and for the county of Hardin eight.

Justices to be appointed.

Number in each county.

SEC. 2. *And be it further enacted*, That each of the Justices so appointed, shall be commissioned and qualified according to the constitution and laws of this state, in similar cases provided, and thenceforward they and each of them shall have and exercise all the powers and jurisdiction, given to other justices of the peace within their respective counties according to law and their commissions.

Their powers & jurisdiction.

SEC. 3. *And be it further enacted*, That it shall and may be lawful for the governor to fill up any vacancy that may happen in the recess of the assembly; and moreover

Governor to supply vacancies and appoint additions.

1792. from time to time when to him it may appear necessary, shall have power to appoint any additional number of justices in any county by and with the consent of the senate.

Commence- SEC. 4. This act shall commence and be in force from ment. and immediately after the passage thereof.

CHAPTER LXV.

An ACT establishing an Inspection of Tobacco at Cleveland's, Holder's, Stafford's and Bush's landings.

Approved December 20, 1792.

Vide the prelection on Chap. 58, ante.

Inspection of tobacco estab-
lished.

Warehouses,
how built.

Scales and weights how furnished.

Inspectors salaries.

Any deficiency not to be paid out of the treasury.

Inspectors how many and how appointed.

Inspectors to give bond, &c.

SECTION 1. *BE it enacted by the General Assembly,* That an inspection of tobacco shall be established at Cleveland's, Holder's, Stafford's and Bush's landings; that a warehouse shall be built at each place by the respective owners of the land, and not at the public expence, that the warehouses shall be called and distinguished in the same manner as the said landings are. That the proprietors of the said inspections, are to furnish the same with the necessary weights and scales, at their own expence. That there shall be allowed and paid annually to each of the inspectors of the said warehouses, the sum of twenty-five pounds for their salary. *Provided always,* if the quantity of tobacco inspected at the said warehouses, shall not be sufficient to pay the usual charges, and the inspectors salaries, the deficiency shall not be paid by the public.

SEC. 2. Two inspectors shall be commissioned; and the third as an additional one, in like manner as inspectors at other warehouses in this commonwealth. The said inspectors shall enter into the like bonds, be subject to the same penalties, and in all respects be governed by the rules and regulations prescribed by the laws now in force, for regulating the inspection of tobacco, and the exportation thereof.

CHAPTER LXVI.

Green county An ACT forming a new County from Lincoln and Nelson.
formed.

Approved December 20, 1792.

The first section describes the boundary, for which see chap 295 of this volume. The remaining sections were temporary, and have had their effect.

CHAPTER LXVII.

1792.

An ACT for establishing a Town at Shelby Court-House.

Approved December 20, 1792.

WHEREAS it is represented to the present general assembly that the justices of the county of Shelby, have fixed upon, as a place to erect the public buildings for the said county, the lands of William Shannon, on the west side of Clear creek, opposite the mouth of Mulberry creek; and that the said William is willing to convey to the justices of the said county, for public use, a suitable lot of land therefor, and desirous to lay off fifty acres around and adjacent thereto, and that by so doing it will be of public advantage.

Preamble.

SEC. 1. *BE it therefore enacted by the general assembly,* That the said fifty acres of land, around and adjacent to the lots whereon the public buildings are to be erected, be vested in David Standiford, Joseph Winlock, John Knight, Abraham Owens and Thomas J. Gwinn, trustees, for a town, to be known by the name of Shelbyville; that they, or a majority of them, proceed as soon as may be, to lay off the same in suitable lots and streets, and sell the lots on some court day, to be held for the said county, to the highest bidder, giving one month's previous public notice of the day of sale; the said trustees shall sell the same on such credit, as the said William Shannon shall previously consent to, and shall take bonds for the payment of the purchase money, which bonds shall, at the time the payments respectively become due, be assigned to William Shannon for his use; but should there previous to such assignment be exhibited a claim to the land, and a suit be actually commenced against such claimant, the said trustees shall previous to such assignment, receive of the said William Shannon, bond with sufficient security, payable to such claimant or claimants, conditioned to repay such money with lawful interest, in case there shall appear upon an adjudication, a better title than the one by which the said William claims; and the said trustees shall convey by deeds, the lots so sold to the purchasers: In case of any vacancy, by death, resignation or removal from the county of any of the said trustees, a majority of the remaining trustees shall fill up such vacancy, by choosing some inhabitants of the county thereto.

Land laid off for a town.

Trustees appointed.

Duties and Powers.

Vacancies how supplied.

1792.

Trustees pre-
scribe the terms
of building &c.

SEC. 2. The said trustees shall have power to prescribe the terms of building, and in case of non-compliance, to forfeit the lots, and sell them again; appropriating the money arising from such sale to the use and benefit of the town.

Lots for public
buildings not
to be appropri-
ated to private
use.

SEC. 3. The lots set apart for the public buildings, shall be considered as the property of the public, and not appropriated to any private use. The freeholders within the said town shall be entitled to all privileges and advantages that the inhabitants of other towns not incorporated, exercise and enjoy.

Rights reserved

SEC. 4. Saving and reserving to all and every person or persons, bodies politic and corporate, other than the said William Shannon, his heirs or assigns, any right, title or interest in and to the lands aforesaid, in the same manner as if this act had not been made.

CHAPTER LXVIII.

An ACT concerning relinquishment of Dower, and recording Letters of Attorney.

Approved, December 20, 1792.

The provisions of this act are incorporated with the act regulating conveyances passed in 1796, (Chap. 278.) By an act passed in 1803, clerks of county courts are authorised to receive the relinquishment of Dower, (Vol. III, Chap. 102.) *Vide* the prelection to Chap. 272, seq.)

Preamble.

WHEREAS many inconveniences arise to the citizens of this commonwealth, as well as non-residents, from the manner now prescribed by law in which deeds and letters of attorney are to be admitted to record, and in which a *feme covert* is to relinquish her right of dower; for remedy whereof,

How deeds of
conveyance by
husband and
wife are to be
executed and
recorded.

SEC. 1. *BE it enacted by the general assembly*, That where any person is about to convey a tract of land and resides in any other county than that in which the land doth lie, it shall and may be lawful for such person and his wife (if he has any) to acknowledge and subscribe a deed for the same, in the presence of two justices of the peace in the county where they reside, and such justices having previously examined the wife apart from her husband, whether she with her own free will and consent relinquished her right of dower in such lands, shall certify the same on the deed under their hands, and a copy of such deed shall be recorded in the court of the

county within four months, and the clerk shall certify on the original deed that a true copy thereof hath been recorded in his office, and such deed shall in eight months thereafter be recorded in the court of the county in which the land shall lie, which shall be as lawful as if the said deed had been acknowledged or proved by the parties in open court; and the clerk for recording a copy, and a certificate on the original deed, may demand and receive six shillings to be paid by the party or parties acknowledging the same, and to be collected as his other fees are by law paid and collected, but shall not receive the tax on such copy.

1792.

Fee to clerk.

SEC. 2. *And be it further enacted*, That where the parties reside in any other state, and are about to convey any land lying within this commonwealth, it shall be lawful for them to proceed in like manner; except that a copy need not be recorded in the county where the parties reside; but the clerk of the county shall certify on the original deed that the persons before whom such deed was acknowledged are justices of the peace, and that due faith and credit is to be given to any act done by them, when acting in their official character; and the seal of the county shall be affixed to such certificate, and such deed certified as aforesaid, shall be admitted to record within any county in this state where the land may lie, and shall be deemed as lawful as if the same had been acknowledged by the parties or proved in open court. Any person or persons about to give a power of attorney to another residing in any other county within this state, may acknowledge the same in the court of the county where the person about to acknowledge the same may reside, and a copy of such shall be certified by the clerk, that it hath been recorded in his office and acknowledged in open court, and a copy so certified being produced to the clerk of the court where the person resides to whom the power is made, and in which the business is to be done, shall be admitted to record in his office; and such power shall be deemed sufficient; where the person or persons making such power of attorney resides in another state, he or they shall proceed as is above required: except that the clerk certifying the copy, shall affix the state or county seal: and such copy shall be recorded in some superior or county court within this state. And as in many instan-

Where parties reside in any other state.

Proceedings on executing powers of attorney where parties reside in different counties.

Where parties executing the powers reside out of the state.

1792.

How the wife
may relinquish
her right of
dower.

ces, deeds have been recorded where the wife has not relinquished her right of dower owing to the great inconveniency attending it: wherefore,

SEC. 3. *Be it enacted*, That it shall and may be lawful in such cases, where deeds have been recorded and the *feme covert* hath not relinquished her right of dower in the same, for her to relinquish her right to the lands so deeded before two justices of the peace in the county; and such justices having previously examined her as is before directed, shall certify the same under their hands, which certificate shall be recorded in the court where the deed or deeds may have been recorded, which shall be deemed sufficient. And in all cases where a deed is made by the parties residing in the county where the land may lie, it shall be lawful for the *feme covert* to relinquish her right of dower in like manner; and the clerk may demand and receive one shilling and three pence for recording every such certificate. This act shall not be so construed as to prevent the parties making the deed or deeds, from acknowledging the same in manner heretofore directed by law.

Commence-
ment.

SEC. 4. This act shall commence and be in force from and after the passage thereof.

CHAPTER LXIX.

An ACT establishing a Town on the lands of John Fowler, in the county of Mason.

Approved December 21, 1792.

No town was erected there, and the project has been long since abandoned.

CHAPTER LXX.

An ACT giving to certain commissioners a further time to make their returns.

Approved, December 21, 1792.

Vide prælection to Chap. 18, ante.

WHEREAS, by an act, entitled "an act to ratify and confirm the proceedings of the commissioners of the several counties within this commonwealth, and giving them a further time to make their returns, and for other purposes;" passed during the present session of assembly, they were allowed until the tenth day of December to make their respective returns,

I. YEAR OF THE COMMONWEALTH.

155

And whereas from unavoidable delays, it is rendered impracticable for several of the commissioners of the tax to make their returns agreeable to the above recited act :

1792.

SECTION 1. *Be it therefore enacted*, That the said commissioners, who have not made their returns, shall have until the twentieth day of February next to make the same, without incurring the penalties inflicted by law ; any thing in the said recited act to the contrary notwithstanding.

Time return to be made.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER LXXI.

An ACT regulating Sheriffs' Fees.

Approved, December 21, 1792.

Vide prelection to Chap. 16, *ante*.

SECTION 1. *BE it enacted by the general assembly*, That the act passed in the general assembly of Virginia, the sixth of May, one thousand seven hundred and forty-five, entitled "an act for the better regulating and collecting certain officers' fees, and other purposes therein mentioned," shall be, and the same is hereby revived, and shall be in full force so far as relates to sheriffs ; and the said tobacco shall be discharged at the rate of one penny half penny per pound. And when any person presented to the grand jury, shall be discharged from prosecution or acquitted on trial, the sheriff shall not charge any fees, but if judgment pass on the defendant or defendants, he shall charge such defendant or defendants, such fees for any services performed by him in the course of prosecution, as he shall by law be allowed for similar services in other cases.

Part of the act of 1745 revived.

Sheriff not to charge fees where persons are acquitted on a prementment, &c.

SEC. 2. *And be it further enacted*, That the office of sheriff shall be considered as vacant when any sheriff shall reside out of the county in which he shall be sheriff, such vacancy shall forthwith be filled according to the constitution and laws of this commonwealth.

Office of sheriff how vacated.

How filled.

SEC. 3. *And be it further enacted*, That so much of every act and acts as comes within the purview of this act shall be and the same is hereby repealed.

Repealing clause.

SEC. 4. This act shall commence and be in force from and after the passage thereof.

Commencement.

1792.

CHAPTER LXXII.

An ACT concerning Sheriffs, and for other purposes.

Approved, December 21, 1792.

Preamble;

WHEREAS, an act passed last session entitled "an act concerning militia fines," by which act it is directed, that all fines that had been imposed and not paid, should be put into the hands of the auditor, who was required to have the same collected immediately, or move against the delinquent sheriffs: And whereas by an passed this session, entitled "an act to regulate and discipline the militia of this commonwealth," an appeal is given to all those who think themselves aggrieved, on whom fines were imposed prior to the tenth day of August last, which renders it necessary that a further time should be given to the sheriff to collect such fines, and the auditor to move against those who may be delinquents; therefore,

Sheriff allowed further time to collect militia fines.

To have credit for fines remitted.

Fines collected &c. how sheriff to get his commission thereon.

Late sheriff of Fayette further time to settle accounts.

Court of Fayette to settle his accounts.

Commencement.

SECTION 1. *BE it enacted by the general assembly,* That the further time of six months be allowed the sheriffs to collect such fines, and the auditor of public accounts shall not move against any sheriff for the amount of any fines for six months, and every sheriff shall in his settlement with the auditor, have credit for all fines that may be remitted agreeable to the last recited act; and where any such fines may have been collected by any sheriff, and remitted thereafter, such sheriff shall be allowed his commissions for collecting the same out of other fines. And whereas a judgment hath been obtained in the county court of Fayette against Eli Cleveland, late sheriff of said county to a considerable amount, and it hath been represented to this present assembly, that great injustice will take place unless the said Eli Cleveland can be permitted to have a further settlement of his accounts, therefore,

SEC. 2. *Be it enacted,* That the said court of Fayette is hereby authorised and required to settle the accounts of the said Eli Cleveland, and to allow him such further credits as he may be justly entitled to, under the laws that were then or may now be in force.

SEC. 3. This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXIII.

1792

An ACT to amend the act entitled "an act establishing County Courts, Courts of Quarter Sessions and a Court of Oyer and Terminer."

Approved December 22, 1792.

Vide preface to Chap. 23, *ante*. The ancient writ of *audita querela* is recognised by this act.

WHEREAS an act passed last session entitled "an act establishing county courts, courts of quarter sessions and a court of oyer and terminer," requires explaining and amending; therefore,

Preamble.

SEC. 1. *Be it enacted by the general assembly, That* the justices commissioned in each county to hold the courts of quarter sessions, shall not have cognizance of any business out of court; except in misdemeanors and matters of a criminal nature, and attachments which may be issued by any justice of the peace and shall be returned to the next court of quarter sessions where the debt or demand is of the value of five pounds current money, or one thousand pounds of tobacco. There shall be an appeal allowed from the judgment of a single justice for any sum over twenty-five shillings to the next monthly court to be held for the county; and such proceedings shall be had thereon as is directed by the above recited act to be had in the court of quarter sessions; and the party appealing, shall give sufficient security to be approved by the justice from whose judgment the appeal is made. All judgments given for twenty-five shillings or under, by a single justice, shall be final; and a justice may award execution for any sum over twenty-five shillings against the body of the party convict, nevertheless the debtor may release his body from execution, by delivering a sufficiency of property to satisfy the debt and costs; and a justice of the county court shall have power to issue a summons to cause any person as a witness living in another county, to appear and give evidence in any matter that may be depending before them, at the request of either party; and such witness shall be entitled to two pence per mile for travelling to and from, and ferriages to be taxed in the bill of costs. The justices of the court of quarter sessions shall be justices of the court of oyer and terminer for trying of any slave charged with a capital offence; and they shall order the sheriff to im-

In what cases Justices of quarter sessions to have cognizance out of court.

Appeal from single justice.

Party appealing to give security.

What judgment of a single justice final. Where execution may be awarded against the body of the party convict, justice may summon witnesses from another county.

His allowance, Court for trial of slaves. Proceedings therein.

1792.

Justice may is-
sue warrant to
apprehend cri-
minal,

Proceedings
thereon.

Examining
court.

Court or two
justices may a-
ward writs of
Ne Exeat, in-
junctions &c.

Courts of Q. S.
in Washington.

Court of oyer
& terminer to
hold two addi-
tional terms.

Punishing con-
tempt.

Commence-
ment.

pannel a jury of twelve men from among the by-standers, for ascertaining the matters of fact, and in all other respects proceed agreeable to the rule established in the court of oyer and terminer, except that no grand jury shall be impannelled on the indictment of any slave.

Every justice of the peace shall have power to issue his warrant to apprehend any person charged before him with any criminal offence, which in his opinion, ought to be examined into, or tried by the courts of quarter sessions; and such justice shall have power to examine and commit the prisoner to the county jail, and to take recognizance of witnesses, and issue his warrant to the sheriff of the county, requiring him to summon the justices of the court of quarter sessions for the examination or trial, as the case may be, of the prisoner as is given by the before recited act to any justice of the court of quarter sessions; the court of quarter sessions or any two justices thereof, shall have power to award writs of *ne exeat* to prevent any person moving out of this commonwealth, injunctions, or habeas corpus. And also award writs of *audita querela* on judgments heretofore had in the supreme court that may be sent to the courts of quarter sessions, which writs shall be issued by the clerk, and returnable to the said court of quarter sessions to which the said judgment shall be removed.

SEC. 2. *And be it further enacted*, That the court of quarter sessions for the county of Washington shall be held in the months, March, May, August and October, instead of February, April, June and September.

SEC. 3. *And be it further enacted*, That the judges of the court of oyer and terminer shall and they are hereby empowered to hold two additional sessions, one commencing the third Monday in January, the other the first Monday in July, and shall be governed by the same rules and regulations as is prescribed by "an act establishing county courts, courts of quarter sessions, and a court of oyer and terminer."

SEC. 4. *And be it further enacted*, That the monthly county courts, or any justice thereof, when acting in their judicial capacity, shall have the same power to punish contempts of their authority, as is given the courts of quarter sessions.

SEC. 5. This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXIV.

1792.

An ACT to amend an act entitled "an act for establishing a Land-Office."

Approved December 22, 1792.

Vide prelection to chap. II, ante.

SECTION 1. *BE it enacted by the General Assembly,* That all caveats against the issuing of grants on surveys that now are or may hereafter be returned into the register's office, shall be entered and determined in the same manner as is directed by the laws now in force, provided that the court of appeals and the courts of quarter sessions in the several counties shall have concurrent jurisdiction of all such caveats, and the party entering the same, shall within fifteen days thereafter return an attested copy thereof to the office of the clerk of the court wherein he means to prosecute the same; whereupon such proceedings shall be had as was heretofore by law directed to be had on caveats returned to the office of the clerk of the supreme court for the district of Kentucky.

Mode of proceeding on caveats.

Court of appeals & courts of Q. S. to have concurrent jurisdiction.

SEC. 2. And whereas the general assembly of the commonwealth of Virginia, at their session in the year 1791, passed an act directing the deputy register to retain in his office all plats and certificates of surveys that were at that time or should hereafter come into his office before the first day of June then next ensuing, until the assembly of Kentucky should give directions respecting them. And whereas by the constitution of this state, the said deputy register was continued in office until the tenth day of August last, during which time the said deputy register did continue to receive as usual plats and certificates of surveys into his office:

Be it enacted by the general assembly, That the plats and certificates of surveys, so received by him and now remaining in the hands of Willis Green, the then deputy register, be by him returned to the register of the land-office in this state, and that the said register proceed to issue grants thereon in the same manner as the register of the land-office in the state of Virginia was by law directed to do in case the said plats and certificates had been returned to him six months previous to the separation of this state from Virginia. And that the said register shall receive as a compensation for issuing such grants, the sum of five shillings each, to be paid by the treasurer of

Certain plats & certificates to be delivered to the register.

Register issue grants thereon.

His fees.

1792.

this state, which sum the auditor is directed to ascertain and settle.

The former deputy register to account for fees thereon.

To deliver books, records, & grants to the register.

Where grants have issued to deceased persons, lands to vest in the heirs or devisees.

Composition money to be paid in specie.

Rates of fees.

Register to furnish appendages of office.

Commencement.

SEC. 3. *And be it further enacted*, That the said Willis Green do settle and account for all the fees due on the platts and certificates of surveys returned to his office as deputy register (since the first day of June last) with the auditor of public accounts and pay into the treasury such sum as shall appear to be due from him upon such settlement, and that upon application of the register of the land-office, the said Willis Green do deliver up the books of record and such grants as may yet remain in the deputy register's office; for all such books and papers with platts and certificates of surveys the register of the land-office shall pass his receipt.

SEC. 4. And whereas in some instances grants have issued in the names of persons who were deceased prior to the date of the grant, and cases of the same nature may happen in future: *Be it enacted*, That in all such cases the land conveyed shall descend to the heir, heirs or devisees in the same manner as it would do had the grant issued in the life time of such defendant.

SEC. 5. *And be it further enacted*, That the composition money due on settlement rights granted to certain poor persons, hereafter to be returned to the register's office, be paid in specie to the register, and by him paid into the public treasury, except where the money hath been paid into the treasury of Virginia.

SEC. 6. That all persons chargeable with any fees for services in the register's office shall discharge the same in specie at the rate of eight and four pence per hundred for tobacco.

SEC. 7. *And be it further enacted*, That the register shall at his own expence furnish all appendages for his office, and that grants may be made out on paper until parchment can be procured.

SEC. 8. This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXV.

An ACT concerning Clerks.

Approved December 22, 1792.

At the January session 1798, an act was passed to reduce into one the several acts concerning clerks, (Vol. II. Chap. 48.)—in 1799 an act was

passed for the relief of their securities in certain cases, (Vol. II. Chap. 202) —in 1800 they were authorised to administer oaths in injunction cases, (Vol. II. Chap. 268) —in 1802 their fees were regulated in certain cases, (Vol. III. Chap. 46) —in 1803 compensation was given to clerks of county courts for their services in criminal prosecutions, (Vol. III. Chap. 96) —and they were authorised to receive an acknowledgment of the relinquishment of Dower, (Vol. III. Chap. 102) —in 1804 the act of 1803 was amended, (Vol. III. Chap. 224) —in 1806 the recording of deeds and other instruments of writing was taken away from the clerks of circuit courts, (Vol. III. Chap. 371.)

1792.

WHEREAS clerks of county courts who held their appointments under the laws of Virginia, were continued in office until the 10th day of August last; and whereas under the laws of this state, many were not re-appointed, and in some counties a clerk has been appointed to the court of quarter sessions, and another to the monthly courts, by which means, the business that remained not finished at the time the new appointments took place, cannot be acted upon; for remedy whereof,

BE it enacted by the General Assembly, That where a clerk has been appointed to the courts of quarter sessions, and another to the monthly courts in the same county, the clerk having the old records in his possession, shall permit the clerk of the other court, to take copies of all books and papers in said office, and to make out a list of all the untried suits, and other matters which may be in such office, and cognizable by such court; and the clerk of the court taking such list, is hereby directed to docket the same in the same order in which they stood in the old record, and the said clerk shall issue executions and other process on any judgment that was obtained prior to the tenth day of August last, and make the same returnable to any court in the county within ninety days; and the said clerks shall proceed to finish all business that remained undone on the tenth day of August last, as the case may require in their respective offices.

CHAPTER LXXVI.

An ACT to provide for the preservation, removal and disposal of the Records and Papers of the late Supreme Court for the District of Kentucky, and for other purposes.

Approved December 22, 1792.

WHEREAS no adequate provision has been made Preamble.
for the preservation, removal and disposal of the records

1792.

and papers of the late supreme court for the district of Kentucky.

Governor shall
appoint 3 com-
missioners.

SEC. 1. *BE it therefore enacted by the general assembly,* That the governor be, and he is hereby authorised to appoint three commissioners for the execution of the duties hereinafter required of them. *And be it further enacted,* That as soon as the said commissioners shall have been appointed, and shall have taken an oath or affirmation, well and truly to execute the duties required of them by this act according to the best of their skill and abilities, they, or a majority of them, shall proceed to take into their custody and possession all the records and papers of the said supreme court. And the late clerk of the said court or whatsoever person or persons shall have, or hold any or all of the said records and papers in possession, is and are hereby required to deliver the same to the said commissioners or a majority of them when they shall so require.

Their duty.

SEC. 2. *And be it further enacted,* That the said commissioners, or a majority of them, shall proceed to examine, separate and arrange the papers, and inspect and examine the records, which shall be of causes which depended in the said supreme court as a court of criminal jurisdiction, upon which final judgments shall not yet have been rendered; and having compared, shall certify the same: and shall cause the said copies, together with the papers belonging to those causes to be delivered to the clerk of the court of oyer and terminer, who is hereby required to receive them into his safe keeping, and to docket the said causes in the order and state in which they were last docketed in the said supreme court.

Clerks of the
courts of Quar-
ter sessions to
attend the com-
missioners to re-
ceive papers,
&c.

SEC. 3. *And be it further enacted,* That the clerks of the several courts of quarter sessions, and the clerks of the courts of quarter sessions, who shall be appointed for the new counties established this session, shall attend the said commissioners at a day to be by them appointed, and shall receive of the said commissioners all papers in which causes have been depending in the said supreme court in which final judgment has not been rendered or a final decree made, or on which execution remains to be done, and which are now cognizable by the court of quarter sessions. And the said clerks shall severally receive the same, and docket the causes in the same order and state in which they were docketed in the su-

preme court, and such proceedings shall be had therein as if they had been originally commenced in the court of quarter sessions ; and the said clerks of the court of quarter sessions shall be permitted under the control of the said commissioners, to take copies of any books or records which belong or in any wise appertain to the office of the said supreme court, and such copies shall be taken and considered of equal force and validity as the original records.

SEC. 4. *And be it further enacted*, That all and each of the copies of records made and certified by virtue of this act, shall be entitled to and receive the same full faith and credit, and shall import the same absolute verity with the original record.

SEC. 5. *And be it further enacted*, That the said commissioners, or a majority of them, shall cause a sufficient number of well bound books to be provided at the public expence, for the purpose of making therein the copies by this act directed to be made.

SEC. 6. *And be it further enacted*, That the said commissioners, or a majority of them, shall also cause the records and all other books and papers that shall thereafter remain of the said supreme court to be delivered to the clerk of the court of appeals, who shall keep the same safely under the direction of the said court.

SEC. 7. *And be it further enacted*, That the said commissioners, or a majority of them, shall from time to time, when cases shall occur in which adequate provision is not made by this act, report the same to two or more of the judges of the court of appeals, who are hereby authorised and required to give such directions therein as shall appear just and necessary ; and the said commissioners shall, at or before the next October term of the court of appeals, make a full and final report of all their actings under and by virtue of this act to the said court, who shall take such order thereon not contrary to law as shall be proper and necessary.

SEC. 8. *And be it further enacted*, That each of the said commissioners shall be entitled to receive three dollars per day for every day they shall severally attend in the execution of the duties of this act ; and each of the clerks employed by virtue thereof, shall receive two dollars per day for every day he shall be so employed.

SEC. 9. *And be it further enacted*, That the auditor be,

1792.

Copies of records of equal credit with the original.

Commissioners to provide books for copies.

Records, books &c. to be delivered to the clerk of the court of appeals

Where new cases occur the judges of the court of appeals to give directions.

Commissioners to report to the court of appeals their proceedings.

Allowance to commissioners.

To their clerks.

1792.

And he is hereby authorised and directed to settle and adjust the accounts of the said commissioners and their clerks, and to draw warrants on the treasurer for the sum which shall be respectfully due to them.

Power given to the court of appeals to provide remedy in certain cases.

Provido,

and he is hereby authorised and directed to settle and adjust the accounts of the said commissioners and their clerks, and to draw warrants on the treasurer for the sum which shall be respectfully due to them.

SEC. 10. *And be it further enacted*, That the court of appeals shall by rule of their court to be made at the first session they shall hold, provide and direct such process and mode of proceeding as shall enable any party or parties to any suit in which final judgment shall have been given or decree made, and who shall think him, her or themselves aggrieved by such judgment or decree, to obtain the same redress which he, she or they might have obtained, had such judgment been given or decree made by one of the courts of quarter sessions: *Provided always, and be it further enacted*, That not more than two of the said commissioners shall act at one time; that the two first named in the commission shall do the business if they shall choose; but should either of them decline, the other shall have a right to call in the third person, who shall attend accordingly, and proceed to the business: and the business so done, shall be as valid as if done by the said two first named or all three of them.

CHAPTER LXXVII.

An ACT to explain an act entitled "an act to provide for the preservation, removal and disposal of the Records and Papers of the late Supreme Court for the District of Kentucky, and for other purposes."

Approved, December 22, 1792.

WHEREAS it is doubtful whether the clerks of the courts of quarter sessions will not be entitled to two dollars per day for every day they shall be employed by virtue of said act; therefore,

SEC. 1. *Be it enacted by the general assembly*, That the clerks of the courts of quarter sessions shall not be entitled to receive the said two dollars per day, any thing to the contrary notwithstanding: *Provided nevertheless*, that the said commissioners shall have power to appoint two clerks to assist them in the execution of the duties required by the said recited act, and that they shall be entitled to receive the said two dollars per day, for every day each of them shall be so employed.

I. YEAR OF THE COMMONWEALTH.

165

CHAPTER LXXVIII.

1792

An ACT concerning the Surveyors, and Register of this State, and for other purposes.

Approved, December 22, 1792.

WHEREAS, some persons have proceeded to enter their unlocated warrants within this state since the first day of May last without any authority for doing the same :

Preamble.

SECTION 1. *Be it therefore enacted by the general assembly,* That if any surveyor within this commonwealth, shall enter or suffer to be entered in his office, any entry for land or receive or issue any platt or certificate of survey on any entry made since the first day of May last, he shall forfeit and pay two hundred pounds for every such offence, to the use of the commonwealth, to be recovered with costs on motion of the auditor in any court of record within this state having cognizance of the same ; provided such surveyor have ten days notice of such motion, and moreover shall be liable to be removed from office. And every surveyor shall certify on any platt or certificate of survey the date of the entry on which such survey was made, that may hereafter be taken out of his office, to be returned to the register of the land office.

Penalty on surveyor in certain cases.

How recovered.

Surveyor shall certify on the platt &c. date of entry.

SEC. 2. *And be it further enacted,* That if the register of the land office shall receive into his office any platt or certificate of survey on which the date of the entry is not certified, or shall issue any grant for land on any platt or certificate of survey, where the entry on which such survey was made hath been entered since the first day of May last, he shall forfeit and pay two hundred pounds to the use of the commonwealth, for every such offence, to be recovered with costs on motion of the auditor in any court of record within this state having cognizance of the same ; provided such register hath ten days previous notice of such motion ; and he shall moreover be liable to be removed from office. And the auditor is hereby empowered and required to move against every surveyor or register so offending accordingly.

Penalty on register receiving platt &c without such certificate endorsed.

How recovered.

SEC. 3. *And be it further enacted,* That every entry of land made on any military or treasury warrant, or which shall be made until otherwise directed by law since the first day of May last, which is in the year one thousand

What entries on military warrants null and void.

1792.

seven hundred and ninety-two, and every survey made on any such entry, or grant that may issue for land by virtue of any survey made on such entry, is hereby declared null and void.

Commence-
ment.

SEC. 4. This act shall commence and be in force from and after the passage thereof.

Governor to ap-
point persons to
examine sur-
veyor's office of
the State and
continental
lines.

SEC. 5. The governor is requested to appoint two fit persons to examine the surveyor's office for the Virginia state and continental lines, and report to the next assembly the quantity of land entered in the reserved military boundary in this state before the first day of May last; and the persons so appointed shall be made a reasonable compensation for their services, and to cause this act to be made known throughout this state.

CHAPTER LXXIX.

An ACT directing in what place the Court of Appeals and Court of Oyer and Terminer shall sit.

Approved December 22, 1792.

SEC. 1. *BE it enacted by the general assembly,* That until it shall be otherwise directed by law, the court of appeals and court of oyer and terminer shall hold their sessions in the court-house in the town of Lexington, and the county jail in the said town shall be the prison, to which all commitments shall be made by the said courts, for which purpose, the keeper of the said jail shall obey any order of the said court of appeals and court of oyer and terminer.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXX.

An ACT to procure an enumeration of the Free Male Inhabitants above twenty one years of age.

Approved December 22, 1792.

SECTION 1. *BE it enacted by the general assembly,* That for the purpose of procuring an enumeration of all the free male inhabitants of this commonwealth, to enable the legislature, at their next session, to apportion the representation in the several counties, agreeable to the sixth

I. YEAR OF THE COMMONWEALTH.

167

section of the first article of the constitution; the commissioners of the tax in their respective counties and districts, when taking lists of taxable property in the year 1793, shall have a column in their book in which they shall note all the free male inhabitants above twenty-one years of age; that the auditor shall, at as early a period as possible, report to the assembly, the number of free male inhabitants in each county.

1792.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXXI.

An ACT concerning Coroners, and for other purposes.

Approved, December 22, 1792.

At the January session 1798, an act was passed concerning coroners, (Vol II. Chap. 42.) *Vide* also an act of 1803, (Vol. III. Chap. 101.)

SECTION 1. *BE it enacted by the General Assembly,* That the act of assembly of Virginia passed in the year 1745 respecting certain officers' fees, is hereby revived so far as it relates to coroners' fees, and that the same may be paid in specie or transfer tobacco at the rate of one penny half penny per pound at the option of the party charged therewith.

Act of 1745
revived as to
coroners.

SEC. 2. *And be it further enacted,* That when any coroner or other officer whatever, who is appointed agreeable to the constitution and laws of this state, shall reside out of the county for which he was appointed and commissioned, such office shall be considered vacant, and such vacancy shall be filled agreeable to law.

Office how va-
cated.

SEC. 3. *And be it further enacted,* That the county courts in the respective counties within this state, shall at or before their courts to be held in the month of March next, appoint a competent number of overseers of the poor, which number shall not exceed one half of the number of justices commissioned in any such county, and the overseers so appointed, shall continue in office during good behaviour: when vacancies shall happen by death, resignation or refusal of any overseer of the poor, such vacancy shall be filled by the respective county courts, and that such overseers so appointed, shall lay a statement of their accounts of expenditures and the money levied by them before their respective courts in the

Overseers of
the poor how
appointed.

Number, &c.

1792. month of October in every year; and the sheriff of every county, shall collect the levy by them so laid, and account for the same according to law.

Commence-
ment. SEC. 4. This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXXII.

An ACT concerning the Commissioners of the Counties of Logan and Scott.

Approved December 10, 1792.

This is referable to the subject of revenue. *Vide* the prelection to Chap. 10, *ante*.

WHEREAS Young Ewing and David Flourney, Esquires, commissioners within the counties of Logan and Scott were appointed by the courts of Lincoln and Woodford counties previous to the division of the said counties of Logan and Scott, whereby they are compelled to return copies of their books to the clerks and sheriffs of the said counties of Lincoln and Woodford:

SECTION 1. *Be it enacted by the general assembly,* That it shall be lawful for, and the said Young Ewing and David Flourney are hereby required to return copies of their books as commissioners, to the clerks and sheriffs of the counties of Logan and Scott, instead of Lincoln and Woodford; and if the said Young Ewing and David Flourney have made their returns to the clerks and sheriffs of Lincoln and Woodford, the said clerks and sheriffs are hereby directed to give up the books so returned to them, to the said Young Ewing and David Flourney, who shall return them as is by this act directed.

SEC. 2. So much of every act or acts as comes within the purview of this act, shall be, and the same is hereby repealed.

CHAPTER LXXXIII.

An ACT concerning the last Will and Testament of William Harris, deceased.

Approved December 6, 1792.

He had made his will and died on the Ohio in his passage to this state—his widow had settled in Mercer county, under these circumstances as the law stood, the will could not be admitted to record nor administration granted. This act gave to the county court of Mercer the same jurisdiction, as if Harris had died in that county.

CHAPTER LXXXIV.

1792.

An ACT authorising a Lottery.

Approved December 15, 1792.

This act authorised raising five hundred dollars by lottery, in order to purchase therewith a lot of ground, and erect a house of worship for the Lexington Dutch presbyterian congregation.

CHAPTER LXXXV.

An ACT to ratify and confirm the proceedings of the Commissioners of the several Counties within this Commonwealth, and giving them a farther time to make their returns, and for other purposes.

Approved December 6, 1792.

Vide the prelection to Chap. 10, ante.

SECTION 1. WHEREAS by an act entitled "an act establishing a permanent revenue," passed last session, it is directed that the commissioners appointed in each county shall on the second day of August in the present year, and the same day in every year hereafter, proceed to take in a list of the taxable property within their respective counties, and make their returns by the last day of October annually; and whereas the courts of the several counties within this commonwealth by unavoidable delays have not appointed commissioners so as to comply with the requisitions of the above recited act: *Be it enacted by the general assembly,* That the appointment and proceedings of the said commissioners within the several counties in this commonwealth, shall be as lawful as if they had entered on the execution of their office as is required by the said recited act, and they shall have until the tenth day of December next to make their returns without incurring the penalty inflicted by law. And whereas the court of Nelson appointed Austin Hubbard a commissioner for the county of Washington contrary to the said recited act: *Be it enacted,* That the appointment and proceedings of the said Austin Hubbard is hereby ratified and confirmed, and he shall continue to act as a commissioner for the said county of Washington until he hath taken in a list of the taxable property for the present year and no longer. And the said Austin Hubbard shall make his return as is requir-

Preamble:

Appointment
& proceedings
of certain com-
missioners con-
firmed.

1792. ed by law, to the court of Washington county instead of Nelson.

County of
Washington to
appoint a com-
missioner.

SEC. 2. *And be it further enacted*, That the court of Washington shall appoint a commissioner and qualify him as is required by the above recited act in the room of the said Austin Hubbard, as soon as he ceases to act as commissioner for said county.

Also Scott,
Shelby and
Logan,

SEC. 3. *And be it further enacted*, That the courts of the several counties of Scott, Shelby, and Logan, shall have power to appoint commissioners to receive lists of taxable property whenever it may be necessary, and to have them qualified according to law.

CHAPTER LXXXVI.

An ACT authorising the Treasurer to borrow Money.

Approved, December 17, 1792.

BE it enacted by the general assembly, That the treasurer be empowered and he is hereby required to borrow any sum of money not exceeding two thousand pounds, including what he has already borrowed, for which he is authorised to allow six per centum per annum on behalf of the state, and he shall apply the money that may be so borrowed towards paying the expences of the present general assembly, and other purposes that may be enjoined him by law.

CHAPTER LXXXVII.

An ACT appointing Directors of the public buildings and for other purposes.

Approved, December 18, 1792.

This act was temporary, and has had its effect.

CHAPTER LXXXVIII.

An ACT to legalise and confirm the sales of certain lands, made by George Taylor as devisee of Edmund Taylor, deceased.

Approved December 17, 1792.

The sales here legalised had been made by George Taylor *bona fide*, and for the meritorious purpose of paying his father's debts and educating his children. The sales were made by him alone, notwithstanding there were several co-devisees equally with himself entitled to the land. This act confirmed the sales.

I. YEAR OF THE COMMONWEALTH.

171

CHAPTER LXXXIX.

1792.

An ACT authorising the Trustees of Salem Academy to raise a sum of money by Lottery.

Approved December 20, 1792.

The sum authorized to be raised was five hundred dollars, to be appropriated by the trustees to the use of the institution.

CHAPTER XC.

An ACT vesting a certain tract of Land in Henry Green, junior.

Approved December 20, 1792.

Alexander Holland, who died intestate, holding a bond for 56 acres of land had in his lifetime declared an intention of bequeathing it to Henry Green, jr. This act directed the obligor in the said bond to convey the land to Green, but provided that the conveyance should not conclude the right of any person but the said obligor.

CHAPTER XCI.

An ACT appointing Commissioners to examine the South and Stoner's Fork of Licking, as high as the mouth of Strode's creek.

Approved, December 15, 1792.

They were to examine and report to the next assembly, whether the streams were navigable or not. The act says they shall receive no compensation for their service.

CHAPTER XCII.

An ACT to provide for the pay and rations of certain Detachments of Militia.

Approved December 20, 1792.

All the provisions of this act are obsolete.

CHAPTER XCIII.

An ACT for ascertaining the Salaries of the Officers of Civil Government.

Approved, December 19, 1792.

SECTION 1. BE it enacted by the general assembly, That the several officers hereinafter mentioned shall for their respective services be entitled to the following salaries annually, to commence from the acceptance of

1792. *Salaries of the officers of government.* their several appointments, to be paid out of the public treasury in quarterly payments after the same shall have been audited according to law : To the governor or chief magistrate, the sum of three hundred pounds. To the judges of the court of appeals, each two hundred pounds. To the judges of the court of oyer and terminer, each thirty pounds. To the secretary, one hundred pounds. To the treasurer, one hundred pounds. To the auditor, one hundred pounds. To the attorney-general, one hundred pounds.

Auditor to issue warrants. SEC. 2. *And be it further enacted,* That the auditor is hereby empowered and directed to liquidate and settle the accounts of the late judges and officers of the supreme court, for the district of Kentucky, from the first day of June to the tenth day of August, seventeen hundred and ninety two, and issue warrants for the sums that shall be due to the said judges and officers.

Commence-ment. SEC. 3. This act shall commence and be in force from and after the passage thereof.

CHAPTER XCIV.

An ACT for paying the officers of the assembly, and commissioners to fix the seat of government and their clerks for their services.

Approved, December 22, 1792.

All the provisions of this act are obsolete.

CHAPTER XCV.

An ACT to repeal an act entitled "an act for the relief of Innes B. Brent."

Approved, December 22, 1792.

Vide Chapter 29, ante. Winters having given satisfactory security for the payment of the debt, the act of last session was repealed by this.

CHAPTER XCVI.

An ACT for the appropriation of Money.

Approved, December 22, 1792.

This act directed the treasurer to distribute as equally as he might think the state of the treasury would permit, the £. 2000 which he was authorized to borrow by chap. 86, and directed that payment of the money so borrowed should be made out of the first money which should be paid into the treasury.

November Session, 1793.

1793.

CHAPTER XCVII.

An ACT giving a further time to the owners of Lots in the Town of Warwick to improve the same.

Approved, December 7, 1793.

WHEREAS, an act of the Virginia assembly passed at their November session in the year one thousand seven hundred and eighty-eight, entitled "an act to establish a town in the county of Mercer," required the owners of lots in said town, to make certain improvements thereon within three years from the day of sale, which time has expired, and it is deemed reasonable and necessary by the general assembly that a longer time should be given:

SECTION 1. *BE it therefore enacted by the general assembly,* That a further time of three years from and after the passage of this act be allowed to the owners of lots in said town to make the improvements required by the before recited act, and no forfeiture shall accrue until the expiration of the time aforesaid. *Provided always,* That nothing herein contained shall be construed to effect the right of any purchaser or purchasers of any lot or lots, subsequent to the forfeiture under the before recited act.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER XCVIII.

An ACT giving further time to the owners of Land to survey the same.

Approved, December 7, 1793.

Vide prælection to Chap. 33, ante.

WHEREAS, it appears that an act passed by the assembly of Virginia in the year of our lord one thousand seven hundred and eighty-five, entitled "an act to repeal an act entitled an act concerning entries and surveys on the western waters and other purposes," which has been continued by subsequent acts of the legislature of Virgi-

Preamble.

1793. *nia, and one act of this state, may subject the owners of entries to a forfeiture of the same if the requisition of the said act should not be complied with: For remedy whereof,*

Further time
given to survey
lands.

SECTION 1. *BE it enacted by the General Assembly,* That the further time of two years from the first day of January next, be allowed to the owners of entries to comply with the requisitions of the said recited act, during which time no entries shall be forfeited.

And to regis-
ter platts and
certificates.

SEC. 2. *And be it further enacted,* That further time from and after the eighth day of August next, until the end of next session of assembly, be given to the owners of platts and certificates of survey, to return the same to the register's office.

CHAPTER XCIX.

*An ACT concerning Land-Office Treasury Warrants,
in part only executed.*

Approved, December 7, 1793.

Register to de-
liver certain
land warrants.

SECTION 1. *BE it enacted by the general assembly,* That it shall be lawful for the register of the land-office, and he is hereby required to deliver any land office treasury warrant which may be in his office, in part only executed, to the owner thereof or his order.

Persons apply-
ing for such
warrants to
produce a cer-
tificate.

SEC. 2. *Provided always, and be it further enacted,* That the person applying for such warrant, shall produce to the register, a certificate signed by some principal surveyor, who shall have acted on part of said warrant, specifying how much thereof hath been executed, and also what balance remains unexecuted: which certificate together with the owner's name, quantity of acres, and number of the warrant, shall be entered by the register, in a book to be kept for that purpose, and no grant shall ever thereafter issue upon the balance of any warrant so certified to be executed; and the register shall moreover deliver to the party, the surveyor's certificates and also endorse on the warrant delivered, the quantity of acres surveyed and returned to his office upon a part of such warrant, and that a certain balance thereof remains unexecuted.

Register's du-
ty.

His fees:

SEC. 3. *And be it further enacted,* That the register for each warrant he shall deliver, by virtue of this act, shall receive of the party, a fee of three shillings.

II. YEAR OF THE COMMONWEALTH.

175

SEC. 4. This act shall be in force from the passage thereof. 1793.

CHAPTER C.

An ACT establishing a Town on the land of John Grant.

Approved, December 7, 1793.

SEC. 1. *BE it enacted by the general assembly, That* fifty acres of land, lying on Main Licking between the mouth of the two Grassy creeks, in the county of Scott, the property of John Grant, shall by virtue of this act, be vested in John Sanders, John Thrasher senior, Matthias Corwine, Joseph Floyd, John Hay, Squire Grant, and William Henry, gentlemen, trustees, to be by them or a majority of them laid out into lots of half acres each, with convenient streets, and established a town by the name of Wilmington : so soon as the said fifty acres of land shall be laid off, the said trustees or a majority of them shall proceed to sell the said lots at public auction at eighteen months credit, for the best price that can be had, taking bond with approved security of the purchaser or purchasers ; the time and place of which sale shall be previously advertised for one month in the public Gazette ; the purchaser to hold the lots respectively, subject to the condition of building a dwelling house twenty feet by eighteen at least, with a brick or stone chimney, to be finished fit for habitation within four years from the day of sale ; and the said trustees or a majority of them shall convey the lots to the purchaser or purchasers in fee, subject to the condition aforesaid, and pay the money or specialties arising from the sales thereof to the said John Grant or his legal representative. *Provided, That if any* other person or persons shall claim the said land or part thereof within the term of two years, in that case the said trustees shall retain the money in their hands until any such dispute shall be settled, and then to pay such monies or specialties arising from said sale to the person or persons that recover said land, or their legal representative. The said trustees or a majority of them shall have power from time to time to settle and determine all disputes concerning the bounds of said lots, and establish such rules and regulations respecting the police of said town as to them shall seem best ; and in case of death, re-

A town established.

Trustees.

Name.

Powers of the trustees.

Proviso.

Further powers of the trustees.

- 1793
 Vacancies how filled. signation or other legal disability of any of the said trustees, it shall be lawful for the other trustees to supply such vacancy, and the trustees so appointed shall be vested with the same power and authority as those particularly named in this act.
- Lots for not improving in a certain time forfeited. SEC. 2. *And be it further enacted*, That if the purchaser of any lot shall fail to build thereon within the time before limited, the said trustees or a majority of them shall enter into such lots and sell the same again for the best price that can be had, and apply the monies arising therefrom to the benefit of the said town.
- Equitable right of persons reserved. SEC. 3. *And be it further enacted*, That nothing herein contained shall prevent any person who may have a more legal or equitable title to the said land so to be laid off for a town than the said John Grant, from recovering the monies arising from the sale of said lots of the person or persons who may have recovered the same at any time after the said term of two years.
- Commencement. SEC. 4. *And be it further enacted*, This act shall be in force from and after the passage thereof.

CHAPTER CI.

An ACT for establishing a town at Washington Court-House.

Approved December 7, 1793.

- Preamble. WHEREAS it is represented to this present general assembly, that it would be of public utility to have a town established on the land of Matthew Walton in the county of Washington at the place where the courts of said county are appointed to be held, the said Walton having consented thereto, and having sold out lots for that purpose; wherefore,
- Town established. SECTION 1. *Be it enacted by the general assembly*, That fifty acres of land, the property of said Walton, be laid off so as to include the court-house, and the lots that are laid off and sold, and that the same be vested in David Caldwell, Hugh M'Elroy, Benjamin Harding, Daniel Mock and Josiah Wilson, gentlemen, trustees, for the purpose of erecting a town to be called and known by the name of Springfield; and the said trustees, or a majority of them, are hereby authorised, when to them it may seem necessary, to lay off the remainder of said fifty
- Trustees.
- Name.

II. YEAR OF THE COMMONWEALTH.

177

acres of land into lots and sell the same for the best price that can be had at twelve months credit for the use of said Walton, giving two months previous notice of such sale; and they shall also have full power to make such rules and regulations for the regular building on the lots that are already, or may hereafter be laid off as shall appear most conducive to the good and convenience of the inhabitants; and shall have full power to determine the boundaries of lots, and to provide for the cleaning and clearing of the streets and keeping them in order.

1793.

Power and duty of trustees.

SEC. 2. In case of the death, resignation, removal out of the county or refusal of any of the trustees to act, the remaining trustees are vested with full power to supply such vacancy or vacancies, by other suitable persons for that purpose; and the trustees so appointed shall have the same power as those appointed by this act.

Vacancies filled.

SEC. 3. *And be it further enacted*, That the owners or purchasers of lots in the said town of Springfield, shall within five years from the day of sale, erect and build thereon a dwelling-house at least sixteen feet square, with a stone or brick chimney; and on failure thereof, shall forfeit their lots. The trustees, or a majority of them, shall take the said lots into their possession, and sell the same for the best price that can be had, after giving two months public notice of such sale, and apply the money arising therefrom to the use of the said town.

Terms for improving lots.

Penalty for failure.

SEC. 4. The said trustees shall make deeds of conveyance for the lots in said town that may be sold by said Walton, as well as those that are sold by themselves. *Provided however*, That nothing in this act contained, shall be so construed as to affect any contract that may have taken place between the said Walton and those who may have purchased lots of him. Saving and reserving to all and every person or persons, bodies politic and corporate, their right and title either at law or equity in and to the land aforesaid, as if this act had not been made.

Deeds for lots how made.

proviso.

SEC. 5. This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER CII.

An ACT for the revision of the Laws of this Commonwealth.

This act was revived and re-enacted in 1794, (Chap. 143) but nothing effective was done under either of them. In 1795 another act was passed concerning the revision of the laws (Chap. 193) under which the revision of 1796-7 was executed.

1793.

CHAPTER CIII.

An ACT concerning Bills of Exchange.

Approved December 10, 1793.

At the January session 1798, an act was passed to reduce into one the several acts concerning Bills of Exchange, (Vol. 11. Chap. 57.)

Preamble.

WHEREAS Bills of Exchange tend greatly to facilitate the commerce of this state; and whereas the damage of five per cent. per annum allowed by the legislature of Virginia at the session of one thousand seven hundred and eighty-six, is by no means either a sufficient compensation to the holder thereof for the disappointment occasioned by the return of a bill under protest; nor a sufficient penalty to prevent evil disposed or necessitous persons from drawing bills of exchange, having no previous fund established for their payment; therefore,

Ten per cent.
damages on pro-
tested bills of
exchange.

SEC. 1. *BE it enacted by the general assembly*, That if any person or persons shall draw or endorse any bill or bills of exchange upon any person or persons out of this state, and the same being returned back unpaid with a legal protest, the drawer thereof and all others concerned shall pay the contents of the said bill or bills, together with legal interest from the time said bill or bills were protested for non-payment, the charges of protest and ten pounds per cent. advance for the damage thereof, and so proportionable for greater or less sums. And so much of all and every other act or acts as comes within the purview of this act, shall be and the same is hereby repealed.

Commence-
ment.

SEC. 2. This act shall commence and be in force from the passage thereof.

CHAPTER CIV.

An ACT to establish a Town on the lands of Robert Harrison in the County of Bourbon.

Approved, December 10, 1793.

Preamble.

WHEREAS, it is represented to the general assembly that one hundred and fifty acres of land lying on the south fork of Licking, opposite the mouth of Gray's run, the property of Robert Harrison, has been already laid off into a town, with convenient streets and alleys; the lots containing half an acre each; therefore,

SECTION 1. *BE it enacted by the General Assembly*,

That the said town be established by the name of Cynthiana, and the property thereof vested in Benjamin Harrison, Morgan Vanmetre, Jeremiah Robinson, John Wall, senior and Henry Coleman, gentlemen, trustees, who, or a majority of them, are, by virtue of this act directed to sell the residue of lots in said town for the best price that can be had, giving three months previous notice in the Kentucky Gazette, taking bond and sufficient security for the monies or specialties arising from such sales, which shall be transferable to the said Robert Harrison or his legal representative, and execute deeds in fee, as well to those who have already purchased lots, as to them who may purchase in future, obliging the purchasers to build on each lot within four years after such purchase, a house eighteen feet long and sixteen feet wide, with a brick or stone chimney thereto.

1793.

Trustees.

Their power & duty.

Time for improvement of lots.

SEC. 2. *And be it further enacted*, That the said trustees or a majority of them shall have power to settle and determine all disputes concerning the bounds of said lots and establish such rules for the regular building thereon, as to them shall seem convenient : and in case of death, resignation or other legal disability of any of the said trustees, it shall be lawful for the other trustees to supply such vacancy, and the trustees so elected, shall be vested with the same power and authority as those particularly named in this act.

Further duties of trustees.

Vacancy filled.

SEC. 3. If the purchaser of any lot shall fail to build thereon within the time before limited, the said trustees or a majority of them may thereupon enter into such lot and sell the same again, and apply the money for the benefit of said town.

Lots forfeited.

SEC. 4. *Provided nevertheless*, The said trustees never shall have power to alter the present form, plan, or figure of said town, or to enter upon the lots set apart for public uses therein : *Provided however*, That nothing herein contained shall be so construed as to impair any contract that may have been entered into between the said Harrison and those who may have purchased lots of him previous to the passage of this act.

Provide.

SEC. 5. *And be it further enacted*, That nothing herein contained, shall prevent any person who may have a more legal or equitable claim to the land so laid off in said town than the said Robert Harrison, from recovering the mo-

Saving clause.

1793. nies arising from the sales of said lots, from the said Robert Harrison, his heirs, &c.

Commence-
ment.

SEC. 6. This act shall commence and be in force from the passage thereof.

CHAPTER CV.

An ACT to appoint Commissioners for the conveyance of Land in certain cases.

Approved December 10, 1793.

Vide the prelection to Chapter 50, ante.

Preamble.

WHEREAS an act passed at the last session of the general assembly, entitled "an act to appoint commissioners for the conveyance of certain lands," is defective, and provides no remedy for many inconveniences of a similar nature to that intended to be remedied by the said act.

Of conveyances
after death of
the contracting
party.

SEC. 1. *Be it enacted by the general assembly,* That where any person has died, or shall hereafter die intestate, leaving his heirs or any of them infants; or having made a will, shall not in such will have authorised his executors or some other person to make deeds of conveyance, in performance of his contracts, and having previous to his death executed bonds or any instrument of writing, binding him to convey any tract or parcel of land; that in such case it shall be lawful for the administrators or executors of such person, as the case may be, to apply to the court of quarter sessions, or any superior court of original jurisdiction that may be established, to appoint three fit persons, guardians of such infant or infants, who shall have full power and authority to convey any tract or parcel of land to the person entitled to the same, which the decedent bound himself and his heirs in any instrument of writing to convey, agreeable to the tenor of such instrument: And such conveyance so made, shall be as valid and binding upon the heirs, as if made by their ancestor in his life time: *Provided however,* That nothing in this act shall be so construed, as to prevent the infant representatives of such decedent, from instituting suits to recover such land or a compensation in damages from the person or persons to whom it shall be conveyed, if any fraud shall have been practised in obtaining the same.

Proviso.

Commence-
ment.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

II. YEAR OF THE COMMONWEALTH.

181

CHAPTER CVI.

1793.

An to repeal an act entitled "an act prescribing the duties of the Attorney general."

Approved, December 10, 1793.

Vide Chap. 39, ante.

BE it enacted by the general assembly, That the act entitled "an act prescribing certain duties of the attorney general," shall be, and the same is hereby repealed.

CHAPTER CVII.

An ACT establishing a town in the Forks of Licking, on the lands of John Cook, William M'Dowell and John Waller.

Approved, December 10, 1793.

*SECTION 1. Be it enacted by the general assembly, That one hundred acres of land at the junction of the main and south fork of Licking, the property of John Cook, William M'Dowell and John Waller, is, by virtue of this act, vested in Notley Conn, John Hughes, John Cook, John Vance, Samuel Cook, Joseph Hume, William Monroe, James Little and George Standiford, gentlemen, trustees, to be by them or a majority of them laid out into lots of one fourth of an acre each, with convenient streets, and established a town by the name of Falmouth: so soon as the said one hundred acres shall be laid off, the trustees or a majority of them, shall proceed to sell the same for credit or ready money as shall best suit the proprietors, taking bond and security of the purchasers, if sold for credit: the time and place of such sale shall be previously advertised three times in the Kentucky Gazette at least one month before the day of sale. The purchasers to hold such lots respectively, subject to the condition of building thereon a dwelling house sixteen feet square, with a brick or stone chimney, to be finished fit for habitation within seven years from the day of sale; and the said trustees or a majority of them shall convey the said lots to the purchasers in fee, subject to the condition aforesaid, and pay the money or assign the specialties to the said John Cook, William M'Dowell and John Waller or their legal representatives. *Provided*, that the said John Cook, William M'Dowell and John Waller do previous to the receipt of such pay-*

Town estab-
lished.

Trustees ap-
pointed.

Name.

Their power
and duty.

Provide:

1793

ment enter into bond with one or more securities to the trustees, in the penalty of three thousand pounds, conditioned for the payment of the amount of such sale, to any person who shall hereafter establish a more legal or equitable claim to said land.

Further powers of the trustees.

Vacancies how filled.

Lots forfeited for failing to build.

Commencement.

SEC. 2. *And be it further enacted*, That the trustees or a majority of them shall have power from time to time to settle and determine all disputes concerning the bounds of lots, and establish such rules and orders for the regular building of houses thereon as to them shall seem most convenient. And in case of death, resignation or other legal disability of any of the trustees, it shall be lawful for the remaining trustees or a majority of them to appoint others in their stead; and the trustees so appointed shall be vested with the same power and authority as those particularly named in this act. And if the purchasers of any lot, shall fail to build thereon within the time before limited, the trustees or a majority of them may thereupon enter into such lot and sell the same again, and apply the money to the use and benefit of the said town.

SEC. 3. This act shall be in force from and after the passage thereof.

CHAPTER CVIII.

An ACT to exclude from office and suffrage, those who shall be convicted of bribery, forgery, perjury, or other high crimes and misdemeanors.

Approved December 11, 1793.

PURSUANT to the second section of the eighth article of the constitution:

SECTION 1. *Be it enacted by the general assembly*, That any person holding an office, or who may hereafter hold an office of honour, trust, or profit, under the authority of this commonwealth, or who is or shall be entitled to the right of suffrage therein, and being convicted according to due course of law, of any bribery, perjury, forgery, treason or felony, such person so convicted, shall thenceforward during the term of seven years, be incapable of holding any such office and of voting at any election in this state.

SEC. 2. This act shall be in force from the passage thereof.

CHAPTER CIX.

1793.

An ACT for establishing a Town on the land of Adam Shepherd, in the County of Jefferson.

Approved December 11, 1793.

WHEREAS it is represented to the present general assembly, that it would be advantageous to many of the inhabitants of the counties of Nelson and Jefferson, if a town was established on the land of Adam Shepherd, lying on the north side of Salt river, at the lower end of the falls of said river, where the great road leading to Bullitt's lick crosses the same :

SEC. 1. *Be it therefore enacted by the general assembly,* That fifty acres of land, at the place aforesaid, be vested in Nacy Brashears, Samuel Crow, Michael Troutman, Frederick Pennybaker, Benjamin Stansberry, Joseph Brooks and John Essery, gentlemen, trustees, for the purpose of a town, and be established as such by the name of Shepherdsville ; that the said trustees, or a majority of them, shall have full power and authority to lay off the said land into convenient lots and streets, and dispose of the same at public auction, for the best price that can be got, either in money or country produce, as shall be most agreeable to the said Shepherd, giving twelve months credit, and having previously advertised such sale for two months. The said trustees shall take bond with approved securities for the payment of the purchase money to the said Shepherd, and deliver such bond to him.

SEC. 2. *And be it further enacted,* That the purchaser of any lot in said town, shall within seven years after such purchase, build thereon a brick, stone, or log house, sixteen feet square at least, with a brick or stone chimney, otherwise such lot shall be forfeited for the use of the town, and may be disposed of by the said trustees, and the money applied in such manner as they may deem most advantageous for said town. The said trustees shall convey the lots sold to the purchasers in fee simple, subject to forfeiture in case of their non-compliance with the terms and conditions aforesaid ; they shall have power to make regulations for the government of said town, to settle all disputes about the boundaries of lots, and shall be entitled to such immunities and privileges as towns in the commonwealth possess and enjoy. *Provided always,* That nothing in this act shall be so construed

Preamble.

Town established.

Trustees appointed.

Name.

Powers & duty of the trustees.

Purchasers to build on lots in certain time.

And on failure thereof, forfeited.

Trustees to convey, subject to the condition aforesaid.

Proviso.

1793.

ed as to effect the right of any person or persons to the said fifty acres of land, or any part thereof; but any person or persons establishing his or their rights to the same, shall have full power to sue for and recover the purchase money with interest from the said Adam Shepherd.

Commence-
ment.

SEC. 3. This act shall be in force from the passage thereof.

CHAPTER CX.

An ACT giving further time to the owners of Lots in the Town of Harrodsburg to improve the same.

Approved December 11, 1793.

WHEREAS it is represented to this present general assembly that the time allowed by law for the purchasers of lots in the town of Harrodsburg, to improve thereon, has expired, and that a number of the purchasers have not been able to build on and improve the same, according to the requisitions of the act establishing the said town:

SEC. 1. *Be it therefore enacted by the general assembly,* That the further time of four years from and after the passage of this act shall be allowed to the owners of lots in the said town to build on and save the same. *Provided always,* That nothing herein contained shall be construed to affect the purchaser or purchasers of any lot or lots subsequent to the forfeiture under the before recited act.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXI.

An ACT giving further time to the owners of Lots in the Town of Louisville and Milford, to build thereon.

Approved December 14, 1793.

Preamble.

WHEREAS, the act entitled "an act granting further time to the possessors of lots in the towns of Clarkesburg, Morganstown, Harrodsburg and Louisville, for building thereon, will expire before the next ordinary meeting of the general assembly, and it is judged expedient to revive and continue the same, so far as respects the town of Louisville in the county of Jefferson.

II. YEAR OF THE COMMONWEALTH.

185

SEC. 1. *BE it enacted by the general assembly, That* every possessor of a lot or lots in the said town of Louisville, shall be allowed the further space of four years after the day limited by the above recited act shall expire, for building thereon, conformably to the act establishing the said town, during which space no forfeiture shall accrue.

1793.

Further time allowed to improve lots in Louisville.

SEC. 2. *And be it further enacted, That* the owners of lots in the town of Milford shall have the further time of five years, from and after the passage hereof, for improving their lots in the said town.

And Milford.

SEC. 3. This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER CXII.

An ACT for clearing a Waggon-Road from Frankfort to Cincinnati.

Approved, December 14, 1793.

WHEREAS it hath been represented that a Waggon-road from Frankfort to Cincinnati would be both productive of private convenience and public utility, and that the rout lying through an unsettled country, cannot be cleared in the usual manner by order of the county courts: And whereas individuals would contribute by subscriptions for the purpose of raising a fund to have such road cleared, if proper persons were appointed to receive the same and apply them to the use aforesaid: Therefore,

Preamble.

SECTION 1. *BE it enacted by the general assembly, That* Bennett Pemberton, Nathaniel Sanders, and Daniel Weisiger be and they are hereby appointed commissioners to receive subscriptions in money, labor or property, to raise a fund for clearing the said road: and the said commissioners are hereby authorised to take the proper steps to receive the same by opening subscriptions on the first day of January next to continue until a sufficient fund be raised. The said commissioners shall also have power to employ proper persons to view and make the best and most direct way for a waggon-road between the places aforesaid, leading from the one to the other, and to take the necessary measures by contract or otherwise to have the same cut out and cleared so soon

Commissioners appointed.

To open subscriptions.

Their powers.

A a

1793.

Proviso.

as they shall be of opinion that the fund is sufficient, having regard to the probability of encreasing it. *Provided*, That if on the first day of February, the said commissioners shall think that the work cannot be done in pursuance of this law, they shall have a right to discontinue the said subscriptions, and relinquish the project, together with all the subscriptions which they may have received, or proceed to have such road cleared so far and in such manner as the subscriptions then made will warrant as the one or the other may seem to them best, taking care in either case to publish their determination for three weeks successively in the Kentucky Gazette, and at the door of Scott county court-house, and at some public place in the town of Frankfort.

Subscriptions
when payable
and how recovered.

SEC. 2. *And be it further enacted*, That all subscriptions made before the time appointed shall be payable in one month thereafter, and all those subscribing after the time, shall pay the amount thereof within one month from the time of making the same, and the person making the said subscription shall be bound to a strict compliance in point of payment; for which purpose the sum of money, value of property and labour subscribed shall be expressed, and in case any person shall fail to comply with such subscription, it shall be lawful for the said commissioners to recover the same by warrant before a single justice, where it shall not exceed five pounds; and on motion in the county court, where it shall exceed that sum, upon giving the party ten days previous notice: And no replevy shall be allowed of goods or estate taken by execution or judgments under this act.

Proviso.

SEC. 3. *Provided, and be it enacted*, That a majority of the said commissioners shall have power to do any thing in this act permitted or directed to be done by the whole number, and the road hereby cleared shall be established to all intents and purposes and unalterable but by due course of law. *Provided also*, That the several persons through whose lands the same shall run shall have and be allowed the term of seven years from the said first day of January next to sue out writs of *ad quad damnum*, if they or any of them choose to take the same.

When writs of
ad quad dam-
num may be
sued out.

Commence-
ment.

SEC. 4. This act shall be in force from and after the passage thereof.

II. YEAR OF THE COMMONWEALTH.

187

CHAPTER CXIII.

1793.

An ACT establishing a Town on the lands of John Baker, in the County of Clarke.

Approved December 17, 1793.

WHEREAS it is represented to this present general assembly, that the justices of the county of Clarke have fixed upon, as a place to erect the public buildings for the said county, the lands of John Baker, including the spring at which he now lives, and that the said John is willing to convey to the justices of said county for public use, a suitable lot of land therefor, and desirous to lay off sixty six acres around and adjacent thereto, and that by so doing it will be of public advantage.

Preamble.

SECTION 1. *BE it enacted by the general assembly,* That the said sixty-six acres of land, around and adjacent to the lots whereon the public buildings are to be erected, be vested in Richard Hickman, David Bullock, Josiah Bullock, William Bush, Josiah Hart, John Elliott, Benjamin Combs, and John Strode, gentlemen, trustees, for a town to be known by the name of Winchester; that they, or a majority of them, proceed as soon as may be, to lay off the same in suitable lots and streets, and sell the lots on some court day to be held for the said county, to the highest bidder, giving one month's previous public notice of the day of sale: the said trustees shall sell the same on such credit as he, the said John Baker, shall previously consent to, and shall take bond for the payment of the purchase money; which bonds shall at the time the payments respectively become due, be assigned to the said John Baker, for his use; but the said trustees shall previous to such assignment receive of the said John Baker, bond with sufficient security, payable to the right owner or owners, conditioned to repay such money with lawful interest, in case there shall appear upon an adjudication, a better title than the one by which the said John Baker claims. And the said trustees shall convey by deeds, the lots sold to the purchasers. In case of any vacancy by death, resignation, or removal from the county of any of the trustees, a majority of the remaining trustees, shall fill up such vacancy by choosing some of the inhabitants of the county thereto. The said trustees shall have power to prescribe the term of building, and in case of non-compliance, to forfeit the lots and sell them again, appropriating the money arising from such

A town established.

Trustees.

Name.

Powers of the trustees.

Vacancies how filled.

Trustees to prescribe the term of building, &c.

1793.

sale to the use and benefit of the said town. The lots so set apart for the public buildings, shall be considered as the property of the public, and not appropriated to any private use. The freeholders within the said town shall be entitled to all privileges and advantages that the inhabitants of other towns, not incorporated, exercise and enjoy.

CHAPTER CXIV.

An ACT appointing additional Trustees to the Town of Paris.

Approved December 19, 1793.

SECTION 1. *BE it enacted by the general assembly,* That Horatio Hall, John Allen, Thomas Jones, John Smith, William E. Webb, Samuel Harris and Isaac Orchards, gentlemen, be and are hereby appointed trustees to the town of Paris, in addition to those formerly appointed by an act of the Virginia assembly, entitled "an act to amend the act which establishes the town of Hopewell, in the county of Bourbon, and for altering the name of the said town." And the said Trustees are hereby vested with the same powers, and shall perform the same duties which the trustees are vested with, or are bound to perform, which were appointed by the above recited act.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXV.

An ACT to ratify and confirm the appointment and proceedings of the Commissioners of Clarke County, and for other purposes.

Approved, December 19, 1793.

Preamble.

WHEREAS an act entitled "an act to establish a permanent revenue," has not provided for the appointment of Commissioners of the tax, in counties that might be erected within this commonwealth, after the passage of the said recited act; and whereas the court of Clarke county have appointed Jilson Payne and Robert Dougherty, commissioners of the tax, in and for the county of Clarke; therefore,

II. YEAR OF THE COMMONWEALTH.

189

SEC. 1. *Be it enacted by the general assembly, That* the appointment and proceedings of the said Jilson Payne and Robert Dougherty, as commissioners, are hereby ratified and confirmed.

1793.

SEC. 2. *And be it further enacted, That* where any new county may hereafter be erected within this commonwealth, it shall and may be lawful for the court of such county to appoint so many commissioners of the tax as to them may appear right and necessary, who shall perform the same duties, receive the same fees, and be subject to the same penalties, as are directed by the above recited act.

Where a new county is erected, court to appoint commissioners of the tax.

SEC. 3. This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER CXVI.

An ACT concerning Replevy Bonds,

Approved, December 19, 1793.

WHEREAS, the legislature of Virginia, on the fourth day of January, one thousand seven hundred and eighty-seven, passed an act directing the mode of proceedings under certain executions, whereby the sheriff or other officer serving any execution, was permitted and directed in certain cases to take bond, commonly called replevy bonds, with security to pay the amount thereof, with costs to the creditor, within twelve months, which bonds were assignable, and declared to have the force of judgments respectively, whereupon an execution might issue if the same was not paid according to the condition thereof, upon the creditor or his assignee making affidavit of the sum due. And whereas many such bonds were taken by force of the aforesaid act amended and continued, and by virtue of executions issued on judgments rendered in the county courts, courts of quarter-sessions and the late supreme court for the district of Kentucky, and which acts have since expired, and doubts have arisen whether the clerks of quarter-session courts, to which the judgment and papers in such cases have been referred, had a right to issue executions on such bonds, by means of which many creditors have been delayed of their just debts : For remedy whereof,

Preamble.

BE it enacted by the general assembly, That the

1793.

Clerks may issue executions on certain bonds.

clerk of the several courts within this commonwealth, in whose office any replevy bond taken for property sold on twelve months credit, may now be lodged upon the obligee, in such bond named, or his assignee, making affidavit of the sum due thereon, shall, and they are hereby respectively authorised and required, to issue such execution or executions, as such obligee or assignee may direct, and may then legally issue upon a judgment obtained in such court.

Parties may lodge bond with clerks of court or Q. S. and executions may issue thereon.

SEC. 2. *And be it further enacted*, That where any such bond shall now be lodged in the office of any of the clerks above mentioned, and the obligee in such bond named, or his assignee or agent, shall lodge the same with the clerk of any of the courts of quarter-sessions, as directed by an act passed at the last session of the general assembly, entitled "an act to provide for the preservation, removal and disposal of the records and papers of the late supreme court for the district of Kentucky, and for other purposes," together with a copy of the judgment and execution, under, and by virtue of which the same was taken, such clerk shall, and he is hereby authorised and required to issue the like execution or executions, upon the same terms, and in the same manner as if the same bond were now lodged in his office.

Proceedings where suits have been brought on replevy bonds.

SEC. 3. *And be it further enacted*, That where suits have been brought on replevy bonds or on bonds taken for property sold on twelve months credit, and the same have not been prosecuted to judgment, it shall be lawful for the plaintiff or obligee to dismiss such suit upon his making affidavit as is required in other cases of replevy bonds, and applying to the clerk of the court, in which suit may have been brought, such clerk shall issue execution on such bond, in the manner as is hereinbefore directed, and shall include in such execution, the principal and interest due on such bond, together with all costs that may have been incurred by the plaintiff or obligee in the prosecution of such suit.

Commencement.

SEC. 4. This act shall be in force from the passage thereof.

CHAPTER CXVII.

An ACT for the restraint, support, and safe keeping of persons of unsound minds.

Approved December 19, 1793.

Amended by an act of 1804, (Vol. III. Chap. 168.)

II. YEAR OF THE COMMONWEALTH.

191

SECTION 1. *Be it enacted by the general assembly,* That if any person be of unsound mind, it shall be the duty of the attorney general, or of the attorney for the state, of the county, as the case may be, upon being informed thereof, to make application to any court of chancery within this commonwealth, to appoint a committee to such unsound person; and the court of chancery to whom application shall be made, shall in the manner heretofore prescribed, make enquiry into the fact, and make such order respecting the support, restraint, and safe keeping of any such person who shall be so found to be of unsound mind, as to them shall seem just and proper. Wherever the estate of such unsound person, shall be sufficient for the support of his family (if any he have) and himself, the said person shall be supported out of such estate. But where the court shall be of opinion that the estate of such unsound person is insufficient for the support of such unsound person's family (if any he have) and of himself; or of himself, if he have no such family, the said court shall have power to make an order that such sum shall be paid to the committee of such unsound person, out of the public treasury, as to them shall seem just and reasonable; and the auditor on the receipt of a copy of such order, shall debit the same, and give an order for the amount on the treasurer, who is hereby directed to pay the same; and the said court shall have power to take such security of the committee as they shall think fit, and also to call upon the said committee for an account as often as they think right.

1793.
Provision for persons of unsound mind.

How where their estate is sufficient for their support.

How where it is not.

Court to call on committee for account.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER CXVIII.

An ACT concerning the Poor.

Approved, December 19, 1793.

Amended by an act passed at the January session, 1798, (Vol. II. Chap. 51)—and again by an act passed in 1803, (Vol. III. Chap. 104.)

SECTION 1. *BE it enacted by the general assembly,* Certain laws That the several laws concerning the poor heretofore in force, shall be and the same are hereby repealed.

SEC. 2. *And be it further enacted,* That the respective county courts in this state, shall have power, and they are

Poor, how provided for.

1793

hereby required to provide in laying the county levy, for the relief of such poor persons in their several counties, as by personal debility or otherwise, are incapable of procuring a livelihood ; for which purpose the said courts shall from time to time, make orders on the sheriffs or collectors of the county levy, to pay such sums of money as they shall allow to any, such persons.

Information of
poor orphans
how and to
whom given.

SEC. 3. *And be it further enacted*, That the justices of the said courts, at their monthly terms, shall give to the court, information of the poor orphans, and such other children within their knowledge, whose parents they shall judge incapable of supporting and bringing them up in honest courses ; and the said courts are hereby authoris-

Poor orphans,
how bound.

ed, if to them it shall seem right, after summoning the next friend of, or person with whom such poor orphan, or other child, shall reside, to make an order directing their clerks to bind out such poor orphan or other child, apprentice to such person as the court shall name, until the age of twenty-one years if a boy, or eighteen if a girl.

Indentures,
what to contain

The indentures of such apprentices shall contain proper covenants to oblige the person to whom they shall be bound, to teach them some art, trade or business, to be particularized in the indentures, as also reading and writing, and if a boy, common arithmetic, including the rule of three ; and to pay him or her, as the case may be, three pounds and ten shillings, and a decent new suit of clothes at the expiration of his or her time of service. Which indentures shall be approved by the court and recorded.

To be approved
by the court &
recorded.

Fee to the clerk
for recording.

SEC. 4. *And be it further enacted*, That the clerks respectively shall be allowed one dollar for each by them recorded, to be paid by the person to whom the apprentice shall be bound.

Commence-
ment.

SEC. 5. This act shall be in force from the passage thereof.

CHAPTER CXIX.

An ACT for opening the navigation in the South and Stoner's forks of Licking.

Approved, December 19, 1793.

Preamble.

WHEREAS, it hath been represented to the general assembly that the navigation of the South and Stoner's forks of Licking, would be productive of private convenience and public utility : And whereas individuals

would contribute by subscription for the purpose of raising a fund, to be applied to the purpose of clearing and removing the natural obstructions in said streams :

1793.

SEC. 1. *BE it enacted*, That Benjamin Harrison, John Wall, and Isaac Riddle, gentlemen, be, and they are hereby appointed commissioners to receive subscriptions in money, labor or property, to raise a fund for clearing and opening the navigation of the said south fork, from the mouth thereof to the junction of Hinkston and Stoner. And the said commissioners are hereby authorized to procure the same by opening subscriptions on the first day of January next, and continue until a sufficient fund be raised, and the obstructions removed. And from and after the passage of this act, if any person or persons do make any dam in said stream, for any purpose whatever, he she or they, so offending, shall forfeit and pay the sum of five hundred pounds, recoverable with costs in any court of record within this commonwealth, having cognizance of the same, the one half to be paid to the informer, and the other applied to the removing obstructions that may in future arise in said stream.

Commissioners to open S. fork & their powers.

Penalty for building mill-dams.

How recoverable.

SEC. 2. *And be it further enacted*, That Samuel Clay, Benjamin Bedford, John Allen and Laban Shipp, be and they are hereby appointed commissioners with the like power to raise a fund by subscription and to apply the same in the manner herein directed to the purpose of opening the navigation and removing the obstruction in Stoner's fork, as high as the mouth of Strode's creek, provided that any mill or mill-dams now erected on the said fork shall not be removed or pulled down ; but the owners of such mills and mill-dams, shall within eight years from the passage hereof, build sufficient locks and slopes for the passage of all boats that may navigate the said forks.

Commissioners to open Stoners F. with like powers.

Proviso.

SEC. 3. And if any person who shall subscribe for the purposes in this act required, shall fail to pay up his subscription in money or property, or contribute the labor subscribed to be done, it shall be lawful for the commissioners or a majority of them to recover the same, or the value of the property or labor if under five pounds, before any justice of the peace for the county, or if above five pounds, on motion in the court of quarter sessions of the county, upon giving the party subscribing, ten days previous notice of such intended motion.

Subscriptions how recoverable.

1793.

CHAPTER CXX.

An ACT to regulate Taverns, and restrain Tippling Houses.

Approved, December 19, 1793.

The reader will observe that his enquiries on this subject need not go farther back than this act. *Vide* acts of 1804, (Vol. III. Chapter 265) There is however no such act or the legislature there suppose.

Preamble.

WHEREAS, an act entitled "an act for regulating ordinaries, and restraint of tippling houses," and an act to amend the said act, passed by the Virginia assembly, in the year 1779, both of which acts are in force in this state, are insufficient to answer the purposes intended thereby: Therefore,

Two former laws repealed.

SECTION 1. *Be it enacted by the general assembly,* That the said recited acts shall be, and the same are hereby repealed.

Licenses for tavern-keeping

SEC. 2. *And be it further enacted,* That every person intending to keep a tavern or house of entertainment, shall first petition the county court of the county wherein such tavern is intended to be, and obtain a licence, for keeping the same; and the justices of such court to whom the petition is made, shall grant to such person a licence to keep a tavern for the term of one year next ensuing the date of such licence, and from thence until the next court held for the same county, and such licence shall be signed by the presiding justice of the court: *Provided however,* That such court shall not grant a licence to any person to keep a tavern, who shall be of bad character, or does not keep an orderly house; and every person before he receives licence to keep a tavern, shall enter into bond with sufficient security to the effect following: "Know all men by these presents, that we A. B. and C. D. are held and firmly bound unto his excellency ———— Esq. governor of the state of Kentucky and his successors, in the sum of one hundred pounds current money; for the payment of which to be made good to our said governor and his successors, we the said A. B. and C. D. do bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. As witness our hands and seals this ———— day of ————.

Bond &c. when obtaining licenses.

Form of bond.

Condition.

"The condition of the above obligation is such, that whereas the above bound A. B. hath obtained a licence to keep tavern at ———— in the county of ————.

Now should the said A. B. constantly find and provide in his said tavern, good, wholesome, cleanly lodging and diet for travellers, and stableage, provender or pasturage for horses, for the term of one year from the date hereof; and shall not suffer or permit any unlawful gaming in his house; nor suffer any person to tipple or drink more than is necessary; or at any time suffer any disorderly or scandalous behaviour to be practised in his house, with his privy or consent; then this obligation to be void, else remain in full force and virtue." And for every such license and taking of the bond, the person applying for the same shall pay to the clerk as his fee, five shillings, besides the tax imposed by law.

SEC. 3. *And be it farther enacted;* That the justices of the county courts, shall fix the rates and prices to be paid at all taverns within their respective counties, at least twice a year for liquors, lodging, diet, stableage, provender and pasturage, and may increase or lessen the same as to them may seem proper. Every member of the court failing to fix the rates and prices as is hereby required shall forfeit and pay ten pounds. And every tavern-keeper shall within one month after the rates are set, obtain of the clerk of the said court, a fair table of such rates, which shall be openly set up in the public entertaining room of every tavern, and there kept until the rates shall be again set by the court, and then a copy thereof shall be again so obtained and kept from time to time under the penalty of twenty-five pounds on every tavern-keeper, failing so to do. And if any tavern keeper shall demand and take any greater price for any drink, diet, lodging, provender, stableage or pasturage, than by such rate shall be allowed, he or she so offending shall forfeit and pay thirty shillings for every such offence, which shall be recovered by warrant from any justice of the peace for the county, or on presentment of the grand jury. And the penalty on the members of the court for failing to fix the rates, as well as that on the tavern-keepers for neglecting to set up the rates in the public entertaining room of his tavern, shall be recovered by action of debt or information in any court of record within this commonwealth, having cognizance in similar cases, or on presentment of the grand jury, which fines and forfeitures shall be applied towards lessening the county levy.

SEC. 4. *And be it further enacted,* That if any person

1793.

Fee to clerk
for bond and
licente.

Tavern rates
fixed by justices
twice a year at
least.

Penalty for ne-
glect therein.

Table of rates
to be set up.

Penalty.

And for taking
more than al-
lowed.

How recovered.

1793.

Penalty for selling liquor without licenses.

For the first offence.

For a second.

shall presume to keep a tippling-house, or sell by retail any wine, beer, brandy, cyder, whiskey, rum or any other spiritous liquors either directly or indirectly in any house, booth, arbor, stall, boat, or in any other place whatever without a license first obtained as aforesaid, he or she so offending, shall for every such offence, forfeit and pay three pounds, recoverable by order of court on a presentment of a grand jury, or by a warrant of a justice of the peace in the county where the offence is committed, on information of any person. And every person who shall a second time be convicted of keeping a tippling-house, or retailing liquors as aforesaid, shall, besides paying double the penalty imposed by this act, have his liquor seized by any person having a warrant from a justice of the peace for that purpose; and the person seizing the same, shall deliver it to some justice of the peace within the county, and such justice shall sell such liquor for the best price that can be had, and apply the money arising therefrom to the use of the poor, which shall be paid by such justice to some one of the overseers of the poor, and take his receipt therefor, which receipt shall be filed in the office of the clerk of the court for the county.

Justices to put this act in execution.

Justices to give charge to jury.

Suits to have speedy trial.

SEC. 5. *And be it further enacted*, That every justice of the peace shall, and he is hereby required strictly to put this act in due execution within his county, and shall punish all offences that may come within his knowledge contrary to this act. And the presiding judge or justice at each grand jury court shall give this act in charge to the grand jury, and whenever any suit shall be instituted thereupon, the court before whom the same is depending shall proceed to speedy trial out of course and without delay.

Prosecution for breach of bond.

Proceedings thereon.

If convicted not to be licensed again.

SEC. 6. *And be it further enacted*, That when any tavernkeeper shall be presented by a grand jury for being guilty of a breach of the condition of his bond, or by information of any other person, the court shall hear and determine the same in a summary way; and if it appear to such court, that such person has been guilty of a breach thereof, they shall grant judgment accordingly; and the attorney for the county, shall order an execution thereupon; which penalty and forfeiture shall go to the use of the county, towards lessening the county levy; and the court shall not grant to such person a license to keep

tavern in future. And it shall and may be lawful for any two justices of the peace of the county, upon their own view or knowledge, or upon information upon oath of two or more credible witnesses, to suppress any tavern until the next succeeding court, when the offences enumerated in this act and contrary to the tenor of his bond may be practised; and upon certificate of such offence made by the said justices to such court and further enquiry, the court may disable such offender from keeping tavern thereafter, or may restore him upon his former license as they shall see cause. And if any tavern keeper shall presume to sell or retail any liquor after he or she has been so suppressed by the two justices before he or she is restored by the court; he or she so offending, shall be liable to all the penalties by this act inflicted on persons retailing liquor without license. *Provided always,* That nothing in this act contained, shall be so construed as to prevent merchants from retailing liquors in their store, or other persons from selling liquors made from the production of their own farms, provided it is not sold to be drank in their store or house, or that such merchant or other person shall not sell or receive pay for any smaller quantity than one quart to any person.

SEC. 7. *And be it further enacted,* That the clerks of the courts of each county shall put into the hands of the sheriff all fines and forfeitures that may be assessed by the court by virtue of this act and take his receipt therefor, and the sheriff shall be liable to pay and account for all monies that may come into his hands on account of fines and forfeitures by virtue of this act, as he is by law compelled to pay and settle the county levy: and any justice who may assess any fine on any person by virtue of this act, shall put the same into the hands of the sheriff and take his receipt therefor, which receipt shall be filed in the clerk's office for the county; and the clerk of each court shall lay a list of all fines and forfeitures that may be assessed by virtue of this act before the court that sat to lay the county levy.

SEC. 8. *And be it further enacted,* That where any person may suppose himself aggrieved by the judgment of any justice of the peace by inflicting the penalty as is by this act required, that such person shall have an appeal to the next court to be held for the county, and such court shall remit or confirm the judgment, as to them may seem proper.

1793.

Tavern suppressed.

How restored.

Penalty on retailing liquor before restoration.

Provide.

Collecting & disposing of fines, &c.

Person aggrieved by single justice may appeal.

1793

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXXI.

An ACT making allowance to the clerk and sheriff of the Court of Oyer and Terminer.

Approved, December 19, 1793.

Had its effect.

CHAPTER CXXII.

An ACT more effectually to secure the Constitutional Rights and Privileges of the Citizens of this Commonwealth.

Approved, December 19, 1793.

Preamble.

WHEREAS the government of this state is a free republican government instituted for the peace, safety and happiness of the people, and it being contrary to these principles that any man or body of men should have or exercise in any case, an unlimited arbitrary power to fine and imprison for offences against him or themselves in any capacity whatever. And whereas it is declared in the bill of rights, that the free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty, which right would be rendered altogether dangerous and ineffectual if the person or persons who might suppose him or themselves offended in any capacity, were to possess the power to judge of the offence and inflict the punishment. And whereas the trial by jury in all penal as well as criminal cases is both a safe and adequate mode of investigation and decision, and should only be suspended in cases of the most absolute necessity.

Power of courts to punish for contempt limited.

SEC. 1. *Be it enacted by the general assembly,* That no court or judge shall for any contempt against such court or judge, pass judgment or decree, order or inflict or cause to be inflicted any fine exceeding the sum of ten pounds, nor any imprisonment exceeding one day without the trial by jury to assess the quantity of such fine, and determine the duration of such imprisonment.

SEC. 2. *And be it further enacted,* That no justice of

the peace for any contempt offered to him, shall have power to order and inflict, or cause to be inflicted any fine exceeding twenty shillings, nor any imprisonment exceeding six hours. And if any court, judge or justice shall offend herein, the person or persons so offending shall be subject to removal from the office under which he or they acted, and shall moreover be subject to the action of the party injured for damages to be assessed by a jury. And in all cases of trial by jury under this act the truth of the matter may be given in evidence by the defendant on the general issue.

1793.
Power of single justice to punish contempts defined.
Penalty if they exceed their power.

SEC. 3. *Provided, and be it enacted*, That this act is not intended, nor shall it be construed to effect cases arising in the land or naval forces during actual service or under the militia laws, nor to cases where a party served with process from any court, judge or justice, shall refuse to answer according to law, or to perform any decree, judgment or order of the same.

Proviso.

SEC. 3. This act shall be in force from the passage thereof.

Commencement.

CHAPTER CXXIII.

An ACT concerning the Town of Washington, in the County of Mason.

Approved December 19, 1793.

WHEREAS it is represented to the present general assembly, that the act of the Virginia assembly for establishing the town of Washington in the county of Mason, did not vest the land comprehending the same in the trustees then appointed to regulate the boundary of the lots according to the mode commonly observed in similar cases ; for remedy whereof, and for the better securing the lots in the said town to the respective proprietors :

Preamble.

SEC. 1. *Be it enacted by the general assembly*, That the land comprehending the said town as bounded by an act of assembly of Virginia in the year one thousand seven hundred and ninety, except such parts as are hereafter excepted, be and the same is hereby vested in John Gutridge, Thomas Foreman, John Johnson, Edward Harris, John Rogers, George Lewis, David Brodrick, George Wood, Joseph Allen, David Davis, Joseph McCullough and Stephen Treacle, gentlemen, who are hereby appointed trustees for the same. And the said trus-

Lands vested in the trustees with exceptions

1793. ^{1793.} trustees, or a majority of them, are authorised to make such rules for the regular building on the inlots as to them shall appear most conducive to the benefit and convenience of the inhabitants, and have full power to settle and determine the limits of all lots in the said town; they shall have power to form rules for clearing and keeping the streets in good order, by applying to the county court, who shall appoint an overseer with power to call on the inhabitants for that purpose, and all and every freeholder of said town who shall cause a pavement of wood or stone well railed and not less than six feet wide, as the said trustees shall direct, to be made in front of his or their lots for the accommodation of foot passengers, shall, so long as they keep the same in repair, be exempted from working on any public road out of town, whilst he or they continue inhabitants thereof. And if it shall appear that there is any surplus land in the bounds prescribed for the out lots in the said town, a majority of the said trustees shall have power to lay out the same in alleys as to them shall seem most conducive to the convenience of the proprietors of the said out lots, for the free ingress, egress and regress to and from the same. And the deeds heretofore made by William Wood and Arthur Fox to the purchasers of lots in said town, shall be confirmed and remain as valid as if the said town had been originally vested in trustees, and the said deeds made by them except as is hereafter provided. A majority of the said trustees shall have power to convey the lots not yet deeded to the respective proprietors in fee, on producing a receipt from William Wood and Arthur Fox or either of them for the original purchase money, except as is hereafter provided. In case of the death, resignation or other inability of any one or more of the said trustees to act, such vacancy shall be filled up by the appointment of a majority of the remaining trustees with suitable persons for that purpose, who shall have the same power as those herein before appointed; and the said trustees as soon as they have regulated the bounds of lots in the aforesaid town, shall cause a platt thereof to be recorded in the clerk's office of the said county, and shall from time to time keep a record of their proceedings, and may appoint a clerk during good behaviour amenable to said trustees, who may make him an allowance equivalent to his services not exceeding ten dollars per annum; and the said

Powers of the trustees.

Surplus land of the out lots to be laid off into alleys.

Deeds made by Wood & Fox declared valid.

Further powers of trustees.

Vacancies how filled.

Platt of town to be recorded.

To appoint a clerk.

trustees shall have power to levy and collect the said sum together with the charges of drafting and recording the platt in equal proportions from the freeholders therein.

1793.

Rights reserved.

SEC. 2. *Provided, and be it further enacted*, That nothing herein contained shall in any wise effect, alter or impair the right of William Ward, Simon Kenton, John Tebbs, or either of them, their heirs and legal representatives to the lands hereby vested as aforesaid, nor shall the power of the said trustees extend to or in any manner effect those parts of the said town claimed by the persons or any of them above named, their or either of their legal representatives.

SEC. 3. *Provided also, and be it further enacted*, That all the right and claim in both law and equity of all and every other person or persons to all or any other part or parts of the said town, shall be and the same is hereby saved, so far as to enable any such person or persons upon establishing his or their claim to all and every part of the said town, to recover of and from the said William Wood and Arthur Fox, their and each of their heirs and legal representatives, the sum or sums of money or value of the property for which such part or parts of the said town land sold, with legal interest thereon from the time of sale until the same shall be recovered.

Provide.

CHAPTER CXXIV.

An ACT to amend an act entitled "an act establishing County Courts, Courts of Quarter Sessions, and a Court of Oyer and Terminer."

Approved, December 21, 1793.

Vide the prelection to Chapter 23, ante. This act contains some provisions which can be found no where else.

WHEREAS an act entitled "an act establishing county courts, courts of quarter sessions, and a court of oyer and terminer," and an amendment to the said recited act do not comprehend all the cases that are necessary to be provided for; therefore,

Preamble:

SECTION 1. *BE it enacted by the general assembly*, That all appeals from the judgment of a single justice shall be to the next county court held for the county, provided there be ten days between granting the judgment from which the appeal is made, and sitting of the court;

Appeals from the judgment of a single justice regulated.

1793.

Jurisdiction &
power of the
county courts.

and in all appeals from the judgment of a single justice, the parties shall have the benefit of all legal testimony that can be produced. Where the appellee shall reside in another county, the clerk of the court to which the appeal is made, shall have power and authority to issue a summons to cause such appellee to appear before the court, which summons shall be executed by the appellant, or some other person for him, on the appellee, and satisfactory proof of such service shall be made to the court to which the summons shall be returned: and if the appellant shall neglect to execute or cause to be executed such summons on the appellee before the second court after praying an appeal, the judgment of the justice shall stand confirmed. The justices of the county courts shall have cognizance of all matters relative to bastardy within their respective counties, agreeable to the laws of Virginia that are now in force in this state; and shall take bonds and security of the sheriff or collector of the public revenue, and for other duties that may be enjoined them by law: they shall have power to call on the present and former sheriffs or collectors for a settlement of their accounts, and may appoint two of their own body to settle with such sheriff and collector, and make a report of such settlement to the court, and if on such settlement with any sheriff or collector, they may be in arrears to the county, the court shall give judgment and award execution for the sum that may appear due from such sheriff or collector, or against their securities, executors, administrators or legal representative. Provided such sheriff or collector, his or their securities, executors, administrators or legal representative, have ten days previous notice of such motion. The justices who may be appointed to settle with the sheriff or collector as heretofore directed, shall appoint the time and place for making such settlement, and give notice thereof to the sheriff or collector: and if such sheriff or collector shall fail to attend and settle accordingly, he or they so offending shall forfeit and pay thirty pounds, to be recovered with costs by action of debt or information in the court of quarter-sessions for the county, which fine or forfeiture shall be applied towards lessening the county levy; and such justices shall be allowed four shillings for each day they may respectively be employed on such business, to be paid by the county.

The justices of the county courts shall retain cognizance and jurisdiction of all matters and things which are not expressly given to the court of quarter sessions, and shall levy money on the county for the payment of the state's attorney for the county, for his services agreeable to the allowance that may be made him by the justices of the court of quarter sessions. Where there are two clerks in one county, the money that is allowed for the ex-officio services of the clerk by law, shall be equally divided between them.

1793.

And to retain former jurisdiction & power under exceptions.

When any suit may be brought or motion arise in the court of quarter sessions, in which the justices of said court or a majority of them are interested, or when an action may be instituted by one of the said justices against another, the first justice or justices, as the nature of the case may require, who are named in the commission that can be conveniently had, and who may not be interested in the matter that may be depending, shall set in such cases and shall be notified by the sheriff accordingly, and shall possess the same powers as a justice of the court of quarter sessions in cases of a similar nature ; and such justice or justices shall receive the same wages for each day he or they may respectively sit as a justice of the court of quarter sessions would be entitled to. The clerk of the court of quarter sessions on application, shall have power to issue subpoenas in chancery, against any person who may be a resident of any other county, and the sheriff of the county to whom such subpoena is directed shall execute and return the same in like manner as if it had been issued by the clerk of his county to the clerk of the court from whence it issued, and the person who may be served with such subpoenas shall obey accordingly. If the justices of the court of quarter sessions shall refuse to sign a bill of exceptions when presented to them for that purpose, seals shall be affixed to said bill, and it shall be certified and signed by three persons in presence of said justices that the said bill was presented to them, and they refused to sign, which bill shall be as valid and have the same force as if it was actually signed by the justices of said court. Provided however, if the justices suppose the exceptions contained in the bill are not fairly stated, they shall be permitted to assign their reasons for refusing to sign, which shall be made part of the record and sent forward with the said bill to the court

Regulations where justices of Q. S. are interested.

Clerk to issue subpoena in chancery to any county.

Bills of exception in certain cases, regulated

1793.

Set-offs & dis-
counts allowed.

to whom the appeal may be made. When an action for debt is depending in any court of quarter sessions, it shall be lawful for the defendant on trial if the plaintiff should be indebted to him, to plead the same in discount or by way of set-off, or shall give the same in evidence in the general issue ; provided he give notice in writing of the discount he means to give in evidence in the office at the time of putting in his plea : and provided he shall be allowed to give in evidence no discount but those of which notice is so given. And if it appear to the satisfaction of the jury, that the plaintiff is indebted to the defendant they shall admit the same, and bring in a verdict for what may appear due either to the plaintiff or defendant, and judgment shall be entered up accordingly ; and on the trial of a warrant before a single justice, discounts shall also be allowed, and such justice shall give judgment either for plaintiff or defendant in the like manner, provided the plaintiff have reasonable notice of such intended discount.

Power of grand
juries.Jurisdiction of
the court of Q.
S. as to pre-
sentments.

SEC. 2. *And be it further enacted*, That the grand juries which may be summoned to attend the courts of quarter-sessions, shall have power and authority to enquire into all breaches of the penal laws, whether the penalty inflicted by such laws exceed the sum of five pounds or one thousand pounds of tobacco or not ; and the said grand jury shall make presentment thereof either upon the knowledge of two of their own body, or from the information of any other person, and in either case the names of the jurors or the informant shall be set at the bottom of the presentment ; but the said jurors shall in no instance be liable to any costs or suit in consequence of such presentment ; and so much of the oath required by law to be taken by a grand juror, as relates to secrecy shall be hereafter omitted ; and no grand juror shall be obliged to present himself or any other of his fellow jurors. And the said courts of quarter-sessions shall have jurisdiction to hear and determine any of the said presentments in a summary way, without the intervention of a jury, and thereupon grant judgment and award execution in the same manner as if the same exceeded the said sum of five pounds or one thousand pounds of tobacco. And no presentment of a grand jury shall be quashed or dismissed because of one or more of the said jurors not being qualified according to law, provided

the remaining jurors be a sufficient number to constitute a grand jury.

1793

SEC. 3. *And be it further enacted,* That no suit shall hereafter be commenced in any court within this commonwealth by a non-resident, until he shall file in the clerk's office of such court, bond with sufficient security who shall be a resident of this state, conditioned for the payment of all costs that may accrue in consequence thereof, either to the opposite party or any of the officers of such court, and the same may be put in suit by any of the persons aforesaid for the non-payment of the sums that may respectively become due to them. If but one justice of the court of quarter-sessions should meet on the first day of the court, it shall be lawful for such justice to adjourn the court from day to day for three days unless a sufficient number can be sooner had to proceed to business. The clerks of courts shall not demand or receive any tax on judgments, any law to the contrary notwithstanding. The wages of the justices of the court of quarter-sessions shall become due on the tenth day of June and November annually; and the said courts of quarter-sessions shall have concurrent jurisdiction with the court of appeals, in all cases with respect to perpetuating testimony in the same manner, and under the same rules and regulations, and shall have power and authority to admit deeds and other writings to record.

Costs of suits by non-residents regulated

Single justice to adjourn court of Q. S.

Tax on judgments repealed.

Wages of the justices of Q. S. when due. Courts of Q. S. to have concurrent jurisdiction to perpetuate testimony. And to admit deeds to record

SEC. 4. *And be it further enacted,* That the justices of the quarter-session courts shall receive for their services nine shillings per day, provided the tax on law process and alienations within their respective counties shall produce a sum sufficient for that purpose. And,

Wages of justices rated and how regulated.

Be it further enacted, That the justices of the court of quarter-sessions for Jefferson county, be, and they are hereby authorised to hold an additional session, in the month of August next, to commence on the second Tuesday thereof, and to continue the said term twelve judicial days, unless the business before them be sooner compleated; and the court of quarter-sessions which is now directed by law to be held in the said county on the first Tuesday in the month of September annually, shall hereafter be held and commence on the last Tuesday in the month of September in each year.

Jefferson court to hold an additional session.

And be it further enacted, That the judges of the court of oyer and terminer, are hereby authorised and direct-

Time of holding courts altered.

1793.

Court of Oyer
and Terminer
to sit four times
a year.

Tax on State
seal.

Commence-
ment.

ed to hold four terms in each year, to commence on the fourth Monday in the months of January, April, July, and September ; and the court of appeals shall hold an additional session to commence on the first Monday in August annually, to continue the same number of days as are now directed by law in their stated sessions, and no tax shall be demanded for the affixing the seal of this state to any commissions or grants, and the secretary shall demand and receive the tax of six shillings for affixing the said seal to all records or other writing not herein excepted, which may be authenticated to be carried out of this state, and shall be accountable therefor in the same manner as clerks of courts are for taxes on law process.

SEC. 5. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXXV.

An ACT to amend an act entitled "an act concerning Executions, and for the relief of insolvent debtors, and for other purposes."

Approved, December 21, 1793.

Vide the prelection to Chapter 61, ante.

How execution
may issue on
judgment.

Provido.

Form of, and
by whom re-
turnable.

SECTION 1. *BE it enacted by the general assembly,* That all persons recovering any debt, damages or costs by the judgment of any court of record within this commonwealth, may at their election prosecute writs of *feri facius, elegit* and *capias ad satisfaciendum*, within the year, for the taking the goods, lands, or body of the person or persons against whom such judgment is obtained, in manner following: All such writs shall run in the name of the commonwealth, and bear test by the clerks of the said courts respectively, and shall be returnable to any of the rule days of the said court, so that there be always at least thirty, and not more than ninety days between the test and return of each of the said writs: *Provided,* That executions may be issued from the court of appeals returnable in the manner directed by the act entitled "an act establishing the court of appeals." All such writs shall be in the form heretofore used, and shall be executed by the sheriff or other officer to whom the same shall be directed, and shall be returned according to the form heretofore directed by law. When any writ

of execution shall issue, and the party at whose suit the same is issued, shall afterwards desire to take out another writ of execution at his own proper costs and charges, the clerk may issue the same, if the first writ be not returned and executed; and where upon a *capias ad satisfaciendum* the sheriff shall return that the defendant is not found, the clerk may issue a *feri facias*; and if upon a *feri facias* he shall return that the party hath no goods, or that only part of the debt is levied in such case it shall be lawful to issue a *capias ad satisfaciendum* upon the same judgment; and where part of a debt shall be levied upon an *elegit*, a new *elegit* shall issue for the residue; and where *nihil* shall be returned upon any writ of *elegit* or *capias ad satisfaciendum* a *feri facias* may issue and so *vice versa*; and where one judgment is obtained against several defendants execution thereon shall issue as if it were against one defendant and not otherwise. If the owner of any goods or chattels taken by virtue of any execution shall give sufficient security to the sheriff or officer taking the same, to have the same goods and chattels forthcoming at the day of sale, it shall be lawful for the sheriff or officer to take a bond from such debtors and securities, payable to the creditor, rating the service of such execution and the amount of the principal, interest, and costs due thereon, distinguishing particularly, the principal, interest and costs, and with condition to have the goods or chattels forthcoming at the day of sale appointed by such sheriff or officer, and shall thereupon suffer the said goods and chattels to remain in the possession and at the risque of the debtor until that time; and if the owners of such goods and chattels shall fail to deliver up the same according to the condition of the bond, or pay the money therein mentioned in the execution, such sheriff or officer, shall return the bond to the office of the clerk of the court from whence the execution issued, to be there safely kept, and to have the force of a judgment; and thereupon it shall be lawful for the court where such bond shall be lodged, upon motion of the person to whom the same is payable, his executors or administrators, to award execution for the amount therein mentioned, with interest thereon from the date of the bond till payment, and costs; provided the obligors, their executors or administrators, or such of them against whom execution is awarded, have ten days previous no-

1793.

A new execution may issue.

And under what regulations.

Bonds for the delivery of property at the day of sale may be taken.

By whom and in what manner.

Proceedings thereupon.

1793.

Penalty on officer for not returning thereof

Defendant may replevy on certain judgments.

Proceedings thereupon.

Execution may issue to any county.

tice of such motion ; and upon such execution, the sheriff or officer shall not take any security, either to have the goods forthcoming at the day of sale, or for the payment of the money at a future day, but shall levy the same immediately and keep in his hands, the goods and chattels taken thereupon, until he shall have sold sufficient thereof to raise the money due on the execution or the same be otherwise satisfied : and for the better direction of such officer the clerk shall endorse upon any such execution "that no security of any kind is to be taken." If any sheriff or other officer shall fail to deliver or return any bond taken for the forthcoming of property by virtue of this act, within sixty days after the date thereof, to the office of the clerk of the court from whence such execution issued, such sheriff or officer shall be fined by the next succeeding court at the discretion of such court, any sum not exceeding ten pounds for every month of such failure : provided the sheriff or officer have ten days previous notice of the motion for judgment for such fine, and shall be moreover liable to the action of the party aggrieved. Where any judgment has been or shall be hereafter obtained upon any contract made and entered into before the first day of February one thousand seven hundred and ninety-three, the clerk shall, for the direction of the sheriff, endorse upon each and every execution issued upon the said judgment, that the contract was made and entered into before the said day, if it shall so appear from the declaration, writ, or from any bond, bill, note, or other writing, admitted as evidence, and filed in the said suit ; and upon every execution so endorsed, the sheriff shall, and he is hereby directed to take bond of the debtor for the payment of the amount in three months, or sell the same upon three months credit according to the direction of the said recited act : Provided always, that if sufficient security be tendered to the sheriff by the debtor, he shall accept the same, although not approved of by the creditor or his agent. Where judgment shall be obtained in any inferior court of record within this commonwealth for any debt or damages and the person against whom such judgment shall be obtained, shall remove himself or his effects, or shall reside out of the limits of the jurisdiction of such court it shall be lawful for the

clerk of the court where judgment was given at the request of the party for whom the same was rendered to issue any writ of *feri facias*, *elegit*, *capias ad satisfaciendum*, or other legal judicial writ,^{1793:} and to direct the same to the sheriff of any county within this commonwealth, where the defendant or debtor, his goods or lands may be found, which said sheriff or officer to whom the same shall be directed, is hereby empowered and required to serve and execute the same and make return thereof to the court where the judgment was given. Where any writ of *capias ad satisfaciendum* has been or shall be served on any debtor, it shall be lawful for such debtor to tender to the sheriff or officer, serving the same, lands, slaves, or personal property, to the value of the debt and costs for which such execution has issued or may hereafter issue; which property the said sheriff or officer shall receive and proceed to sell in like manner as in the case of goods taken in execution upon a writ of *feri facias*, and shall thereupon discharge such debtor out of custody.

Defendant may be released.

SEC. 2. *Provided always*, That if such property so tendered shall not be sufficient to satisfy the debt or damages and costs, or shall be under any lien or incumbrance, so as that the whole cannot be sold, a new *capias ad satisfaciendum*, or *feri facias*, at the option of the plaintiff shall issue for any balance; and the clerk of the court from which such execution originally issued, shall, upon the return of the sheriff of the insufficiency or incumbrance as aforesaid, issue a new *capias ad satisfaciendum* or *feri facias* if required; but where such property shall have been under any incumbrance, the debtor shall not be at liberty to tender slaves or personal estate on a second *capias ad satisfaciendum* being served, or in case of a *feri facias* issued in consequence of such return avail himself of the right to replevy for three months, if the contract should have been made before the first day of February, one thousand seven hundred and ninety-three. Wheresoever on a sale under any execution, the amount of such sale shall exceed the principal, interest and costs, the sheriff or officer shall pay such excess or surplus to the debtor, his executors, administrators or agent; and if any sheriff shall fail or refuse to pay such surplus or excess when required, such sheriff or officer, his or their security or securities, his or their executors

Provides

Debtor to receive surplus of the amount of sale

1793.

or administrators, shall every and each of them be liable to the like penalty and judgment in favor of the said debtor, as is by the said before recited act directed in favor of a plaintiff against a sheriff for money levied on an execution.

Recital.

SEC. 2. Whereas, by an act entitled "an act subjecting lands to the payment of debts," injustice is likely to be done, in consequence of lands being made liable to execution on judgments obtained on contracts made and entered into before the passage of the said act: For remedy whereof,

Part of the act
subjecting lands
to the payment
of debts repealed.

SEC. 3. *Be it enacted*, That so much of the said act as subjects lands to execution for judgments obtained on contracts made and entered into before the seventeenth day of December in the year one thousand seven hundred and ninety-two, shall be and the same is hereby repealed; where any writ of *fiery facias* shall be issued against the lands, tenements and hereditaments of any debtor, and the judgment on which the said writ is issued, shall have been obtained on a contract made and entered into prior to the said seventeenth day of December one thousand seven hundred and ninety-two, the clerk shall, if it shall so appear from the declaration, writ or from any bond, bill or other writing, admitted as evidence and filed in the said suit, endorse upon each and every execution issued upon the said judgment, that the contract was made and entered into before the said day. And where such endorsement is made, the sheriff shall not levy the same upon the lands, tenements or hereditaments of the debtor, but shall levy the same in the same manner, and like proceedings shall be had thereupon, as if the *fiery facias* had been issued against the goods and chattels of the debtor only.

Repealing
clause.

SEC. 4. So much of every act or acts as comes within the purview of this act shall be, and the same is hereby repealed.

Commence-
ment.

SEC. 5. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXXVI.

An ACT appropriating Money.

Approved, December 21, 1793.

The first section is the ordinary appropriation bill—the remaining sections contain some permanent provisions, and are therefore retained.

II. YEAR OF THE COMMONWEALTH.

211

SEC. 2. *BE it further enacted*, That the public printer be allowed two hundred pounds, for his services as printer to this commonwealth, until a final settlement of his accounts can take place. *Be it further enacted*, That the said printer shall remove his office and keep the same in the town of Frankfort, on or before the first day of November next, and if he refuse, or fail to comply therewith, the governor of the commonwealth is hereby empowered and required to employ some other fit person to perform the same. And whereas an act passed during the present session of the general assembly, empowering the treasurer to borrow a sum of money not exceeding two thousand pounds, and it is just and reasonable that an equal proportion of the money in the treasury should be divided among the several claimants in proportion to their several demands; therefore,

SEC. 3. *Be it enacted*, That the treasurer pay to each of the members of the general assembly and the officers thereof, an equal proportion of the public money in his hands, according to the amount of their respective claims, as nearly as may be with convenience.

SEC. 4. *And be it further enacted*, That all warrants which is or shall be issued by the auditor on the treasurer for any money whatever, shall be receivable in discharge of any taxes hereafter to be collected within this commonwealth. And, *be it further enacted*, That no officer whatsoever in this state shall be entitled to receive any pay by virtue of such office, until he shall have actually accepted of such office by qualifying himself according to law.

CHAPTER CXXVII.

An ACT to amend an act entitled "an act establishing a permanent Revenue."

Approved, December 21, 1793.

Vide prælection to Chapter 10, ante.

WHEREAS great inconveniences accrue to persons who hold land or lands in several counties, from the manner prescribed by the above recited act, for listing the same with the commissioners; for remedy whereof,

SECTION 1. *BE it enacted by the general assembly,*

1793.

Printer.

To remove his office to Frankfort, &c when.

Recital.

Apportionment of money.

Warrants receivable in taxes to be collected.

When officers to be paid.

Preamble.

1793. That it shall be lawful for any person or persons, to give in all his, her or their land, lying in this state, to the commissioners of the tax in which he, she or they shall reside, specifying the quantity of acres in each tract, and the county in which it lies, and the lands so given in shall be as effectually secured from forfeiture as if they had been given in to the commissioners of the district in which they lie.

Lands listed
with commis-
sioners.

SEC. 2. *And be it further enacted,* That the lands in this state shall be divided into three classes; that is to say, first, second and third rate. The first rate land shall be classed at three shillings, second rate land at one shilling and six pence, and third rate land at nine pence per hundred acres, and in the same proportion for a greater or lesser quantity. And that the rich lands in Fayette county shall be considered as the standard of first rate land.

Lands classed.

Standard of
first rate land.

SEC. 3. *And be it further enacted,* That it shall be the duty of the commissioners, when they receive an account of lands from any person, and enter the same in their list, to ascertain to the best of their knowledge the rate of every tract or tracts of land so given in, and note in their list whether it is first, second, or third rate.

Commissioner's
duty in classing
lands.

SEC. 4. *And be it further enacted,* That the following rule shall be observed by the said commissioners in rating any tract of land; where the greater part of a tract shall, in their opinion, be superior in point of quality to second rate land, it shall be denominated first rate; where the greater part of a tract shall be inferior to first rate and superior to third rate in point of quality, it shall be denominated second rate; and where the greater part of a tract of land shall be inferior to second rate, it shall be denominated third rate land. And where any commissioner has no knowledge of any tract of land given in, and is unable to say with certainty in what class such tract ought to be placed, it shall be lawful for such commissioner to receive information on oath from the owner or any other person, concerning the quality of such land, and place it in that class that shall appear to him to be just from such information.

Quality not
known to be
placed in se-
cond class.

SEC. 5. *And be it further enacted,* That any tract or tracts of land that a commissioner has no knowledge of and cannot receive satisfactory information concerning, shall be placed in the second class.

SEC. 6. *And be it further enacted,* That where any person thinks himself aggrieved by the commissioners having placed any tract or tracts of land belonging to him in an improper class, that it shall be lawful for such person, upon application to the county court of the county in which the land lies, and making due proof of the same, to have the matter rectified, and the proper class of such tract or tracts ascertained.

1793.

To rectify improper classing.

SEC. 7. *Be it further enacted,* That so much of the above recited act, as imposes a tax on final judgments, shall be and the same is hereby repealed.

Tax on judgments repealed.

SEC. 8. *Be it further enacted,* That it shall and may be lawful for any person or persons who may reside in any other state, and who hold land or lands in this commonwealth, to list the same with any commissioner of the tax within this state : and all persons where they reside in any other state, may pay any tax or taxes which is or may become due from him, her or them, into the treasury of this commonwealth, and the treasurer shall certify the same to the auditor of public accounts, specifying therein the person's name, the county or counties in which the land or lands may lie for which the tax was paid, and also the county in which such land or lands were listed, in order to enable the auditor to allow the respective sheriffs of counties where such land or lands were listed, all due credits.

How non-residents may list their lands.

To pay their taxes.

SEC. 9. *And be it further enacted,* That any person who shall fail to list all or any of his or her land lying or being within this commonwealth when applied to by the commissioners for his, her or their taxable property ; whether he, she or they claim the same by entry, survey or patent, shall be liable to the same penalties and forfeitures as other persons are for failing to give in their lands, agreeable to the directions of the act establishing a permanent revenue.

Penalty for not listing.

SEC. 10. *And be it further enacted,* That the tax upon horses per head shall be six pence, on every head of neat cattle one penny half penny, and on all negroes per head one shilling and six pence. The reduction of the taxes contained in this act shall not be construed so as to operate on the collection of the taxes for the year one thousand seven hundred and ninety-three.

Rates of taxes on horses, cattle & negroes.

SEC. 11. *Be it further enacted,* That where any collector of the public taxes has appointed one or more de-

Collector's remedy against his deputies.

1793.

Auditor to
move against
delinquents.

Sheriff failing
to give bond &c
for collecting
taxes to vacate
his office.

Late clerks and
sheriffs to settle
with commis-
sioners.

Further duties
of the commis-
sioners.

How clerk of
court of appeals
to settle.

puty collectors, or shall hereafter appoint any such deputy, and he shall refuse or fail to account for and pay to his principal all taxes collected by him, or that were to be collected by him, within the time limited for the collection of taxes, it shall be lawful for such collector to move against such deputy and his securities in the court of quarter sessions in the county, and the auditor shall have power to move against any delinquent sheriff, in like manner, for all taxes due from such deputy or sheriff, upon giving him and his securities ten days previous notice of such motion. And where any sheriff has failed or refused to give bond and security according to law for the collection of the public taxes arising in his county, such sheriff shall give bond and security on or before the next March court to be held for his county, or on failure thereof his office of sheriff shall be vacated, and such vacancy supplied by the governor according to law.

SEC. 12. *And be it further enacted,* That the commissioners of the tax are hereby required, to call upon the persons who were clerks of the different courts, and sheriffs of the several counties in this commonwealth prior to the separation from the state of Virginia, and such persons shall account to the respective commissioners on oath, for the amount of all taxes received by them on law process or otherwise, and not accounted for and paid into the treasury of Virginia prior to such separation; and such person shall pay into the treasury of this state the amount of the taxes so accounted for in the same manner as the clerks of the respective courts and sheriffs of the different counties do, and shall be entitled to the same discount and subject to the same penalty for a failure thereof.

SEC. 13. *Be it enacted,* That it shall be the duty of each commissioner to receive the list of land of any person or persons, at any time when given in to him, who shall make return thereof at the next general return by him to be made.

SEC. 14. *Be it enacted,* That the clerk of the court of appeals shall deliver in to the commissioners of the district in which he resides, his account in like manner as other clerks are required, who shall compare and certify the same as the accounts of clerks are directed to be, and the said clerk of the court of appeals shall be allowed to retain in his hands so much money for books, papers and

other necessities for his office as may be allowed by the court, which shall be entered of record and certified to the auditor of public accounts and credited accordingly.

1793

SEC. 15. *Be it enacted*, That the claim or claims of no person or persons whatever, to land lying within the limits of that part of this commonwealth, which have been ceded by the authority of the United States, to any particular tribe or tribes of Indians, shall be subject to any forfeiture, fine or tax whatever, until a further act of the legislature for that special purpose.

Certain land exempted from taxes.

SEC. 16. *Be it enacted*, That it shall and may be lawful for any person who shall have failed to list his, her or their taxable property with the commissioners of the tax for the district in which he, she, or they may reside, to list the same with the clerk of the monthly county court, on or before the first day of March next, and such clerk is hereby required to make out two distinct lists, exclusive of the original, one of which he shall deliver to the sheriff of the county, and transmit the other to the auditor of public accounts, which shall be acted upon in the same manner by the sheriff and auditor, and for the same purposes as if taken and retained by the commissioners of the tax, from the time that he, she or they may so list the same, such person shall not be subject to a fine or treble tax by the information of any person.

How persons may list their property who have failed to do so.

SEC. 17. *Be it further enacted*, That the commissioners shall hereafter proceed to take lists of taxable property immediately after the tenth of March annually, and shall administer the oath to the persons to give in all the property in their possession or care, on the tenth day of March next preceding taking such list, and the commissioners shall make a return of their books to the persons as are by law directed, by the last day of June annually; and the sheriff shall collect from all and every person or persons chargeable therewith, the taxes imposed by law in his county, and shall pay and account for all monies that may come into his hands on account of the taxes, into the public treasury, on or before the fifteenth day of June in each year, instead of the first day of August.

Time of taking lists of property altered.

Sheriff to pay taxes into the treasury

SEC. 18. This act shall commence and be in force from and after the passage thereof.

Commencement.

An ACT authorising the Register of the land office to issue Grants for land in certain cases, and for other purposes.

Approved December 21, 1793.

The provisions of this act, though extensive in their operation, are not generally known.

Preamble.

WHEREAS it is represented to the present general assembly, that the surveyor of Kentucky county, in many instances, did not enter the number of the warrant in the locations that were made in his office ; and whereas many warrants located as aforesaid, are lost or mislaid, and the surveyors of the several counties in this state refuse to certify that they are lost or mislaid, as they never came to their possession, and it is presumable that the surveyor of Kentucky, being a sworn officer, would not make the locations without receiving the warrants upon which they were founded :

Warrants lost or mislaid how to be certified by surveyor.

SECTION 1. *BE it therefore enacted by the general assembly,* That the surveyors of the several counties in the commonwealth, shall certify the plats and certificates of survey made on any such entry, with the date of the location, and that the warrant or warrants upon which the same were founded, have not come to his possession, and the register is hereby authorised to receive such platt and certificate, without the number of the warrant or warrants being specified in the same, and issue patents therefor in the usual form, which shall be as good and valid as if the warrant had accompanied the certificate.

Register to issue grants thereon.

Survey islands and issue grants

SEC. 2. *And be it further enacted,* That where any person or persons, have locations on any island in the Ohio, below the mouth of Green river, made on land office treasury or other warrants, such locations shall be surveyed by the surveyor of the continental line, or his deputy, and the platt and certificate of such surveys shall be recorded in his office, in the usual manner, and the register of the land office is hereby authorised to receive such plats and certificates and issue patents therefor in the same manner as in other cases.

Commencement.

SEC. 3. This act shall commence and be in force from and after the passage thereof.

II. YEAR OF THE COMMONWEALTH.

217

CHAPTER CXXIX.

An ACT for dividing the County of Bourbon.

Approved, December 21, 1793.

The first section describes the boundary, for which see Chapter 295 of this volume. The remaining sections were temporary and have had their effect.

1793.

Harrison county formed.

CHAPTER CXXX.

An ACT apportioning the Representation among the several counties.

Approved December 21, 1793.

Had its effect.

CHAPTER CXXXI.

An ACT to amend an act entitled "an act for regulating the Fees of county court justices."

Approved, December 21, 1793.

Vide the prelection on Chapter 27, *ante*.

WHEREAS the fees enumerated in the said recited act in many instances are more than sufficient for the services thereby required to be rendered: Therefore,

Preamble.

SECTION 1. *BE it enacted by the general assembly,* That the said recited act shall be and the same is hereby repealed.

Former act repealed.

SEC. 2. *And be it further enacted,* That from and after the passage hereof, the justices of the county court may demand and receive the following fees, viz. For issuing a warrant for any sum above twenty-five shillings, nine pence; for a copy of judgement and papers on an appeal, three shillings; for certificate of any oath where it may be required, nine pence; for posting a stray, for the whole service, one shilling; for issuing an attachment and taking bond, two shillings and six pence; for issuing a summons for a garnishee and taking a schedule of effects, one shilling; for an order of sale, nine pence; for a peace or search warrant, one shilling each; for attending to take depositions in any case, four shillings per day; for taking special bail, one shilling; for certifying a power of attorney, or deed of conveyance, one shilling; for a hue and cry, and escape warrant, one shilling each. Any justice who shall demand or receive a greater fee for any service than is hereby allowed, or receive a fee for any other service than is herein specified, shall for every such offence forfeit and pay five pounds with costs on

Justices fees.

Penalty for demanding unlawful fees.

1793.

Fees where
more than one.Issue their fee
bills.Record pro-
ceedings.Penalty for giv-
ing & filling up
blank warrants.Commence-
men.

motion or information of the party aggrieved, for his or her use, or any person suing for the same in the court of quarter session in the county where such offence shall be committed, and such court shall give judgement accordingly; and such justice shall moreover vacate his office.

When two or more strays of the same species are posted by any justice, such justice shall receive the same fee only as if there were but one from any one person. The justices in case of non payment, shall have power to make out their fee bills for any fees that may become due by virtue of this act, and put the same in the hands of the sheriff or constable to be collected and paid as the fees of the sheriffs of the several counties are within this state; and each justice shall from time to time keep a fair record of his proceedings.

SEC. 3. *And be it further enacted*, That if any justice of the peace shall give any blank summons or summonses to any constable and such constables shall fill up and execute such summons or summonses, such justice or constable so offending shall for every such offence forfeit and pay five pounds with costs, on motion or information for the use of the party aggrieved, in the court of quarter session of the county, upon giving ten days notice of such intended motion to such justice or constable as the case may be; and such justice or constable shall be moreover liable to be removed from office.

SEC. 4. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXXXII.

An ACT to amend and repeal in part an act entitled "an act to provide for the Pay and Rations of certain detachments of Militia."

Approved, December 7, 1793.

Obsolete.

CHAPTER CXXXIII.

An ACT allowing additional pay to the troops enlisted to garrison the Block-houses on the wilderness road, and for other purposes.

Approved, December, 1793.

This act gave them the pay allowed the militia when in the service of the United States.

II. YEAR OF THE COMMONWEALTH.

219

CHAPTER CXXXIV.

1793.

An ACT to legalize the proceedings of the Court of Quarter-Sessions and County Courts of Green, and for other purposes.

Approved, December 14, 1793.

The proceeding legalized was holding courts on improper days—The other purposes was directing when courts should be held hereafter.

CHAPTER CXXXV.

An ACT authorising the Treasurer to borrow Money.

Approved, December 14, 1793.

SECTION 1. *BE it enacted by the general assembly,* That the treasurer is hereby authorised and required to borrow any sum of money, not exceeding the sum of two thousand pounds, for which he is empowered on behalf of the state to allow six per centum ; and he shall apply the money so borrowed towards paying the expenses of the present general assembly, and to such other purposes as may be directed by law.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXXXVI.

An ACT authorising Trustees to sell part of Charles Lynch's Land to pay his debts.

Approved, December 14th, 1793.

This act represents him as insane and in debt, and because a sale of his personal estate would distress his family, authorises a sale of his lands.

CHAPTER CXXXVII.

An ACT for affording protection and defence to the Iron Works on Slate creek, in the county of Clarke.

Approved, December 19, 1793.

Had its effect.

CHAPTER CXXXVIII.

An ACT for dividing and selling a part of the Lands of which Joseph Mitchell died seized and possessed.

Approved, December 21, 1793.

He had directed the land to be sold by his will, but owing to the removal

1793.

of the witnesses thereto, it could not be proved, and the executors declined acting—all his children except one were minors. This act appointed commissioners to make the sale and conveyances.

CHAPTER CXXXIX.

An ACT concerning the Directors of the Public Buildings.

Approved, December 21, 1793.

By the first section of this act, the directors were authorised to call on Andrew Holmes for a deed or deeds for the lots given by him as a donation towards erecting the public buildings—and were empowered to make deeds to those who had purchased the lots.

The second section appropriates 1000 dollars out of the revenue tax, towards completing the public buildings.

The third section directed them to rent the house of Andrew Holmes, occupied by Nicholas Lewis, for the term the public were entitled to it, and to apply the proceeds to finishing the public buildings.

The fourth section authorised the directors to sue for subscriptions and for debts due on the purchases of lots.

The act has had its effect.

CHAPTER CXL.

An ACT for extending the power of the Trustees of Georgetown, and for other purposes.

Approved, December 21, 1793.

Additional
trustees.

Their power.

Provido.

Commence-
ment.

SECTION 1. *Be it enacted by the general assembly, That* John Hawkins, George Brown and Bartlet Collins, gentlemen, be added to the present trustees of the town of Georgetown. And the said trustees together with those heretofore appointed, and their successors, or a majority of them, shall have power from time to time to form such rules and regulations as to them shall appear proper and necessary for the clearing and keeping in repair the streets and alleys in said town, and shall have power to remove nuisances and obstructions that are or may happen in said town or streets, or in the water, adjoining or opposite water street, so as to preserve the same from filth; and to make such further regulations as to them shall seem best. *Provided,* The said trustees shall not make further regulations than are herein enumerated contrary to the wish of a majority of the free-male inhabitants thereof.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXLI.

1793

An ACT for the better regulation of the town of Lexington, and for other purposes.

Approved, December 21, 1793.

SECTION 1. *BE it enacted by the general assembly,* That whosoever shall erect any nuisance within the limits of the said town, or shall cause any obstructions in the streets or highways of the same, shall forfeit and pay the sum of three dollars.

Penalty for nuisances.

SEC. 2. Whosoever shall be guilty of running or racing horses in the streets or highways within the limits of the said town, shall forfeit and pay the sum of three dollars. If the trustees of the said town shall appropriate two acres of land in some convenient place within the limits of the same for the purpose of shewing stud horses, and shall give public notice thereof by publishing the same for four weeks successively in the Kentucky Gazette, no person shall thereafter shew any stud horse in the streets or highways of the said town, on pain of forfeiting and paying the sum of three dollars. The forfeitures accruing by virtue of this act shall be sued for in the name of the said trustees of the said town, and recovered in the manner sums of the like amount are now recovered by law. All sums of money recovered by virtue of this act shall be paid to the said trustees or to any person empowered by them to receive the same, and shall be by them appropriated to the purpose of clearing and keeping in repair the streets and highways of the said town.

For racing.

For shewing stud horses.

Collect & appropriate penalties.

SEC. 3. *And be it further enacted,* That the trustees of the town of Boonsborough, are hereby authorised to lay off and sell to the highest bidder one acre of land of the commons of said town the most suitable for erecting thereon salt-works; and the money arising from the sale of the said acre of land shall be applied to the use of the said town in such manner as the trustees thereof may deem proper.

Powers of the trustees of the town of Boonsborough.

SEC. 4. *And be it further enacted,* That whosoever shall be guilty of running or racing horses in the streets or highways, or shooting at mark within the limits of the lots of the town of Washington in the county of Mason, and Georgetown in the county of Scott, or Bairdstown in the county of Nelson, shall forfeit and pay for every

Penalty for offences in certain towns.

1794.

such offence the sum of six shillings ; which forfeitures shall be collected in the name of the trustees of the said towns respectively, and may be recovered in the manner sums of the like amount are recoverable by law, and shall be applied by the said trustees respectively towards keeping the bridges and streets of the said towns in repair.

Commence-
ment.

SEC. 5. This act shall commence and be in force from and after the passage thereof.

November Session, 1794.

CHAPTER CXLII.

An ACT authorising persons to relinquish their Rights to Lands.

Approved, December 4, 1794.

Vide the 17th section of the revenue law of 1799, (Vol. II. Chapter 71)—likewise an act passed in 1801 (Vol. II. Chapter 352) authorising a relinquishment in the register's office.

Preamble.

WHEREAS, it is represented to the general assembly, that many persons hold tracts of land subject to taxation, and are desirous of continuing their interest in only part thereof, and that others have claims to lands which they wish to relinquish without being subject to the expence of law suits :

Disclaim title.

SECTION 1. *Therefore be it enacted by the general assembly,* That it shall be lawful for any person or persons, his, her, or their agent or attorney, lawfully authorised so to do, to relinquish or disclaim his, her, or their title, interest, or claim to and in any tract or part of a tract of land that he, she, or they may think proper, by making an entry of the tract, or that part thereof so disclaimed with the surveyor of the county in which the land or the greater part thereof shall lie, in a book to be by him kept for that purpose, which said entry shall describe the situation and boundary of the land disclaimed with certainty, and be signed by the party in the presence of the surveyor, who shall attest the same.

III. YEAR OF THE COMMONWEALTH.

223

SEC. 2. *And be it further enacted,* That by virtue of the aforesaid entry and disclaimer all the interest of the party in the said tract shall be vested in this commonwealth, and shall never be reclaimed by the party, his, her or their representatives. *Provided always,* that nothing in this act contained shall be so construed as to affect or injure the claim or claims of any other person or persons who may have any entry or entries on the lands so relinquished or disclaimed. The surveyor shall be entitled to receive from the party disclaiming, for each entry, or for a copy thereof, one shilling.

1794

Right to land
vested in the
state.

Proviso.

Fees to surveyor.

SEC. 3. This act shall commence and be in force from the passage thereof.

Commence-
ment.

CHAPTER CXLIII.

An ACT to ratify an amendment of the Constitution of the United States, proposed by Congress to the Legislatures of the several states.

Approved December 7, 1794.

This amendment took effect early in the year 1798. It was contended in the supreme court of the United States, that it should not operate on suits theretofore commenced and then standing on the docket for trial, but the court was of opinion that their jurisdiction as to all cases embraced by the amendment, was absolutely extinguished—they accordingly directed them to be struck from the docket. *Vide* III. Dallas, 378.

WHEREAS it is provided by the fifth article of the constitution of the United States of America, that congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to the said constitution, which shall be valid to all intents and purposes as part of the said constitution, when ratified by the legislatures of three fourths of the several states: And whereas at a session of the congress of the United States begun and held in the city of Philadelphia on the second day of December, 1793, it was resolved by the senate and house of representatives in congress assembled, two thirds of both houses concurring, that the following amendment be proposed to the legislatures of the several states, which amendment when ratified as aforesaid, to be valid to all intents and purposes, as part of the said constitution, to wit: "The judicial power of the United States, shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any one of

Preamble.

Proposed amendment.

1794 the United States by citizens of another state, or by citizens or subjects of any foreign state."
BE it therefore enacted by the general assembly, That
 Enacting clause the aforesaid amendment be, and the same is hereby ratified and confirmed.

CHAPTER CXLIV.

An ACT directing an enumeration to be made of the free male inhabitants within this commonwealth, above the age of twenty-one years.

Approved December 7, 1794.

Enumeration of free males. SECTION 1. *BE it enacted by the general assembly,* That an enumeration shall be made of the free male inhabitants of this commonwealth above twenty-one years of age, to enable the legislature at their next session to apportion representation among the several counties agreeably to the sixth section of the first article of the constitution. The commissioners of the tax in their respective counties and districts when taking lists of the taxable property in the year one thousand seven hundred and ninety-five, shall have a column in their book, in which they shall note all the free male inhabitants above twenty-one years of age; and the auditor shall at as early a period as possible, report to the general assembly, the number of free male inhabitants in each county above the age of twenty-one.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXLV.

An ACT for erecting a new county out of the counties of Woodford, Mercer and Shelby.

Franklin county formed.

Approved, December 7, 1794.

The first section describes the boundary and is contained in Chapter 295 of this volume. The remainder of the act is temporary and has had its effect, except the following:

Recital.

SECTION 2. And whereas great convenience will arise to the inhabitants of the said county of Franklin, residing on the south side of the Kentucky river, if they shall be permitted to pass the said river free of expence: and

to promote that end, Andrew Holmes, the present possessor of the ferry, and the devisees of William Stewart, deceased, who claim an undivided moiety of the lands on the south side of said river, at the place of landing, having consented and covenanted that on certain public days, the said inhabitants may pass the said ferry free of expence.

1794.

SEC. 3. *Be it further enacted*, That on each county court day, days of holding courts of quarter sessions, days of public elections and general musters, the inhabitants of the said county of Franklin, on the south side of the said river shall, and they are hereby declared to have a right to pass and repass the said ferry, free of all and every expence whatever. And if the keeper of the said ferry shall neglect or fail when required to ferry over without expence any of the said inhabitants, on any of the aforesaid days without a reasonable excuse, for every such neglect or failure he shall forfeit and pay the sum of three shillings, to be recovered by warrant before any justice of the peace of said county with costs, by any person who shall sue for the same.

Inhabitants to cross ferry free.

Penalty on ferryman for refusal.

SEC. 4. This act shall commence and be in force from and after the tenth day of May next.

Commencement.

CHAPTER CXLVI.

An ACT for the better regulation of the towns of Paris and Milford.

Approved, December 7, 1794.

SECTION 1. *BE it enacted by the general assembly*, That whosoever shall erect any nuisance within the limits of said town, or shall cause any obstruction in the streets or highways of the same, and not removing the same upon notice from one or more of the trustees of said town, shall forfeit and pay the sum of three dollars for every twenty-four hours such nuisance or obstruction shall remain after such notice. Whosoever shall be guilty of running or racing horses, playing at or throwing bullets in the streets or highways, or shooting at a mark or otherwise, within the limits of the inlots of said town, shall forfeit and pay the sum of three dollars. The forfeitures accruing by virtue of this act may be sued for by any person in the name of the trustees of said town,

Penalty on nuisances.

For racing, &c

1794.

How recovered
& appropri-
ated,

and recovered in the same manner as debts of the like amount are recovered by law. And all sums of money recovered by virtue of this act shall be paid to the trustees or to any person empowered by them to receive the same, and shall be by them appropriated to the purpose of clearing and keeping in repair the said streets and highways of said town.

Additional
trustees to Mil-
ford.

SEC. 2. *And be it further enacted*, That Samuel Estill, James M'Collister, Robert Caldwell, and Benjamin Holaday, be, and they are hereby appointed trustees of the town of Milford, in the county of Madison, in addition to those heretofore appointed by law.

Commence-
ment.

SEC. 3. This act shall commence and be in force from and after the passage thereof.

CHAPTER CXLVII.

An ACT concerning claimants to lands in the town of Versailles.

Approved, December 7, 1794.

Preamble.

WHEREAS, it hath been represented to the present general assembly, that John Williams, Thomas Reeves and Charles Pelham, respectively, have claims to several parts of the lands owned by Hezekiah Briscoe, on which the town of Versailles in the county of Woodford, has been laid off and established, and they are willing that the rights respectively should be vested in the trustees of said town, upon condition, that the money arising from the sale of the lots in said town, shall be retained in the hands of the commissioners appointed to sell the lots in said town, until the respective rights and titles of the said claimants can be investigated and determined, and then the money with interest thereon to be paid to the proprietors of the better title respectively, and it is thought that it would conduce to the security of the purchasers of lots in said town, if an act should pass to the effect aforesaid: Therefore,

Rights vested
in trustees.

SECTION 1. *BE it enacted by the general assembly*, That all the right and title of the said John Williams, Thomas Reeves, and Charles Pelham, respectively shall be, and the same are hereby vested in the said trustees of the said town of Versailles to the same use and purpose that the title of the said Hezekiah Briscoe, was vested in them by law.

III. YEAR OF THE COMMONWEALTH.

227

SEC. 2. *And be it further enacted*, That the deeds of the said trustees to the several purchasers of lots in the said town shall compleatly vest all the right and title of the said John Williams, Thomas Reeves, and Charles Pelham, as well as the right and title of the said Hezekiah Briscoe, in the purchasers of lots in the said town respectively. 1794.
Deeds made by trustees.

SEC. 3. *And be it further enacted*, That the said commissioners shall have power, and they are hereby required to retain in their hands all the money arising from the sale of lots in the said town, until the title to the said town land shall be finally adjusted between the said claimants, and then to pay the said money with lawful interest thereon, from the receipt thereof, to such of them respectively as shall appear to have the best title. Commissioners appointed.

SEC. 4. This act to be in force from the passage thereof. Commencement.

CHAPTER CXLVIII.

An ACT to revive and continue an act, entitled "an act for the revision of the laws of this commonwealth."

Approved, December 7, 1794.

Obsolete, *Vide* Chapter 102, *ante*.

CHAPTER CXLIX.

An ACT for removing the obstructions and for opening the navigation of main Licking as high as the mouth of Slate creek, and up said creek to Bourbon furnace.

Approved December 12, 1794.

Vide the prælection to Chapter 48, *ante*.

WHEREAS it is represented to the present general assembly, that the opening of the navigation of main Licking and Slate creek, will be of public utility. Preamble.

SECTION 1. *BE it enacted*, That for the purpose of removing all artificial obstructions out of the said river and creek, it shall be the duty of those persons who have any claim, interest, or share, in any mill or fish dam, or any other obstructions, effectually to remove them by the first day of May next. Any person neglecting to comply with the requisitions of this act, shall forfeit and pay the sum of thirty pounds, to be recovered. To remove obstructions, and when.
Penalty for neglecting.

1794.

Penalty for ob-
structions here-
after,How appropri-
ated,Commence-
ment.

ed by action of debt or information in any court of re-
cord having cognizance of the same.

SEC. 2. *And be it further enacted*, That if any per-
son or persons shall hereafter erect or cause to be erec-
ted, any such like obstruction or other impediment that
will any manner obstruct or impede the navigation of said
river or creek, such person or persons so offending shall
in manner above forfeit and pay the sum of two dollars
for every twenty-four hours such obstruction shall re-
main in said river or creek. All such fines and forfeit-
ures, when recovered shall be paid, one half to the party
suing for the same, and the other half to the use of this
commonwealth.

SEC. 3. This act shall commence and be in force from
and after the passage thereof.

CHAPTER CL.

*An ACT for establishing the Kentucky Academy, and in-
corporating the trustees thereof.*

Approved December 12, 1794.

Trustees ap-
pointed.and incorpora-
ted.To hold their
first session.

SECTION 1. *BE it enacted by the general assembly*,
That David Rice, Caleb Wallace, Jacob Froman, Samuel
Shannon, Terah Tamplin, John Miller, James Crawford,
Robert Finley, Andrew M'Calla, William Ward, James
Thompson, James Camper, John Caldwell, William
Henry, Robert Marshall, Notly Conn, James Blythe,
and Cary Allen, shall be, and they are hereby constitu-
ted a body politic and corporate, to be known by the
name of trustees of the Kentucky academy, and by that
name shall have perpetual succession, and a common seal,
with a power to change the same at pleasure, and as such,
shall be authorised to exercise all powers and privileges
that are enjoyed by trustees, visitors, or governors of
any college or university within this state, not herein lim-
ited or otherwise directed.

SEC. 2. The said trustees, or two thirds of them, shall
hold their first stated session, at Ashridge meeting-house,
the third Tuesday in February, one thousand seven hun-
dred and ninety-five, and they shall then, or as soon as
they shall think most convenient, fix upon a proper place
for a permanent seat of said academy and proceed to erect

III. YEAR OF THE COMMONWEALTH.

229

buildings thereon ; and until suitable buildings and regulations are made at such place, they may commence and proceed in the institution, at any other place they judge proper.

1794

SEC. 3. The said trustees and their successors by the name aforesaid, shall be capable in law to purchase, receive, and hold to them and their successors, any lands, tenements, rents, goods, and chattels, of what kind soever, which shall be given or devised to, or purchased by them for the use of the said seminary, and also receive and demand from the collectors, or other persons appointed by the Transylvanian Presbytery such sums of money or property as may be collected or promised, pursuant to their resolutions as published to this effect, to promote a public seminary, and to sell or dispose of the same in such manner as shall seem most conducive to the advantage of the said academy.

May purchase lands, &c.

SEC. 4. No donation given or received for the use of the seminary, shall be appropriated to the use of any grammar school whatsoever.

No appropriation for grammar school.

SEC. 5. The said trustees of the name aforesaid, may sue or be sued, plead or be impleaded, in any court of law or equity.

May sue and be sued.

SEC. 6. They shall have power from time to time to establish such bye-laws, rules and ordinances, not contrary to the constitution or laws of this commonwealth, as they shall deem necessary for the government of said academy, and form general rules by which they shall be determined when any trustee shall vacate his seat.

Form bye laws.

SEC. 7. The president of the said academy, shall be a minister of the gospel, of the most approved abilities in literature, and acquaintance in mankind, that may be obtained, and zealously engaged to promote the interest of real and practical religion.

Qualification of president.

SEC. 8. The trustees shall elect a president, treasurer, clerk, and so many professors, tutors or masters, as may be necessary ; and upon the death, resignation, or legal disability of any of the trustees, president, or other officer of the said academy, or any removal from office, the board of trustees shall by appointment, supply the vacancy occasioned thereby. And all trustees and officers of said academy, shall be elected by ballot.

Officers how elected.

SEC. 9. The president and other officers shall have fixed salaries, and continue in office during good beha-

Salaries.

1794

Sessions of the trustees.

vior or for such limited time as the said trustees shall judge proper to ascertain when the appointment is made.

SEC. 10. The said trustees shall hold two stated sessions in each year, at such time and place as they shall judge proper, and in case a sufficient number do not attend to constitute a board, those who do attend, may adjourn to any day, previous to the next stated meeting.

Duty of chairman.

SEC. 11. The chairman of the trustees shall have power to call a meeting of the said trustees, and it shall be his duty upon the request of any five of them, to do the same whenever cases of emergency require it; but upon any called meeting, the chairman shall at least give ten days notice from the date of his circular letter, or publication of said meeting, and the business that required the call, shall be communicated and particularly specified.

Number to constitute a board.

SEC. 12. Two thirds of the whole number of trustees in service shall constitute a board to do business, and the voice of the majority of the whole number present shall decide on any question, motion, resolution, or appointment, except in the appropriation of the funds, forming the constitution, fixing and establishing the permanent seat of the seminary, electing the president and other officers, and fixing their salaries; in all which cases the same number of trustees shall concur as is required to constitute a board, and where such concurrence is wanting, the decision of the board shall be of no avail.

Officers elected by the board.

SEC. 13. The treasurer, clerk, and other subordinate officers, shall be subject to the direction of the board.

To take oath.

SEC. 14. The trustees, president, treasurer, clerk, and other officers, shall take the oath or affirmation of allegiance to this commonwealth, to be administered by any of the judicial officers of government, or by the chairman, or secretary of the board, and to be noted by the secretary in the proceedings of the board.

Religious tenets of students not to be influenced.

SEC. 15. No endeavours shall be used by the president or other teachers, to influence the minds of any student, to change his religious tenets, or embrace those of a different denomination, any further than is consistent with the general belief of the gospel system, and the practice of vital piety.

CHAPTER CLI.

1794.

An ACT for opening a road from Madison Court-House to the Hazlepatch.

Approved, December 12, 1794.

SECTION 1. *BE it enacted by the general assembly,* That Robert Barr, Robert M'Gowan, William Irvine, Robert Rodes, and James Barnett, gentlemen, be and they are hereby appointed commissioners to receive subscriptions in money, labour, or property, to raise a fund for clearing a road from Madison court-house, to the Hazlepatch, on the road leading from the Crab Orchard to Powell's Valley, who shall open subscriptions on the first day of January next, and continue them open from time to time, as they shall be directed by the county court of Madison; the said commissioners shall have power to employ proper persons to view the best and most direct way for a road as aforesaid, and also to take the necessary measures by contract or otherwise to have the same, or part thereof, cut out and cleared, as soon as it shall be practicable. Any person subscribing money, labour, or property, shall be bound to a strict compliance when called on by the commissioners, and in case any person shall fail to comply with such subscription when required, it shall be lawful for the said commissioners to recover the same by warrant, before a single justice, where it shall not exceed five pounds, and on motion, in the county court, where it shall exceed that sum, upon giving the party ten days previous notice. And no replevy shall be allowed of goods or estate taken by execution or judgments, under this act. A majority of the said commissioners shall have power to do any thing in this act, permitted or directed to be done by the whole number. And the road hereby cleared shall be established to all intents and purposes, and unalterable but by due course of law. Provided that the several persons through whose lands it shall run, shall be allowed the term of seven years from the passage of this act to sue out writs of *ad quod damnum*, if they or any of them shall choose to take the same. And if the whole or any part of the said road, shall not be cut out and cleared in the manner aforesaid, in a reasonable time to be judged of by the county court of Madison, the said court shall have full power and authority to order out as many male laboring tithe-

Commissioners appointed.

Their powers and duty.

To recover subscriptions.

No replevy.

Road unalterable but by law.

Sue out writs of *adquoddamnum* Court may order out tithables to compleat its

1794.
 Proceeded a-
 gainst, on refu-
 sal.

Provide.

Commence-
 ment.

ables of the county aforesaid, and in such manner as may be judged proper, for the opening and finishing the same. And every person so called upon, failing to appear with such tools as he shall be directed, or appearing and failing to bring such tools and perform such labor as he ought to do when required, shall be subject to the like sums and penalties, and proceeded against in like manner as delinquents failing or refusing to labor on a road when called upon within his county. Provided nevertheless that each person shall be exempt from labor on the said road, one day for every three shillings, or the amount thereof, which he, (or being a slave) his master may have subscribed with the commissioners aforesaid.

SEC. 2. This act shall be in force from the passage thereof.

CHAPTER CLII. .

An ACT for the purpose of erecting a Linen Manufactory in Georgetown.

Approved December 12, 1792.

This act authorized money to be raised by subscription for the above purpose, but either no attempt was made or the scheme proved abortive.

CHAPTER CLIII.

An ACT for establishing a Town on the land of Benjamin Craig and James Hawkins, at the mouth of Kentucky.

Approved December 13, 1794.

Preamble.

WHEREAS it hath been represented to the present general assembly, that six hundred acres of land lying on the Ohio, and on the upper side of the Kentucky river, at its junction with the Ohio, the property of Benjamin Craig and James Hawkins, hath been laid off into lots and streets for a town, and praying that the same may be vested in trustees and established a town by the name of *Port-William*.

The trustees.

SEC. 1. *Be it enacted*, That all the right and title of the said Benjamin Craig and James Hawkins to the said six hundred acres of land, shall be and the same is hereby vested in Cave Johnson, Thomas Montague and Jeremiah Craig, gentlemen, trustees, and established a town by the name of *Port-William*; the said trustees, or a

III. YEAR OF THE COMMONWEALTH.

233

majority of them, shall have power, and they are hereby authorised to convey to the purchasers of lots respectively in the said town, by deed in fee simple, with general warranty, all such lots sold, or that may be sold by the said Benjamin Craig and James Hawkins, which deeds shall bind the said Benjamin Craig and James Hawkins, their heirs and assigns, to fulfil the covenants of the said warranty. The said trustees shall have power, and they are hereby authorised to regulate the streets and determine all disputes respecting the limits of the said town lots. *Provided*, That this act shall not be extended to affect the right of any person other than the said Benjamin Craig and James Hawkins.

SEC. 2. This act shall be in force from the passage thereof.

1794.

Warranty of the lots sold.

Further power of trustees.

Provido,

Commencement.

CHAPTER CLIV.

An ACT to establish a Town on the lands of James Francis Moore, in Jefferson County.

Approved December 13, 1794.

WHEREAS it is represented to the general assembly, that one hundred and fifty acres of land near Mann's Lick, the property of James Francis Moore, adjoining the land of James Speed, and lands claimed by Joseph Brooks, has been already laid off into a town, with convenient streets, out-lots, &c. therefore,

Preamble.

SECTION 1. *Be it enacted by the general assembly*, That the said town be established by the name of New-Town, and the property thereof be vested in Abner Field, Basil Prather, Isaac Hornbeck, Lewis Field, and James Standiford, gentlemen, trustees, who, or a majority of them, are by virtue of this act directed to sell the residue of lots in said town for the best price that can be had, giving three months previous notice in the Kentucky Gazette, and at the court-house doors of the counties of Jefferson, Nelson and Shelby, taking bond and sufficient security for the monies arising from such sale, and transfer the same unto the said James Francis Moore, or his legal representatives, and execute deeds in fee, as well to those who have already purchased lots, as to those who may purchase in future.

Name.

Trustees.

Their duty.

SEC. 2. *And be it further enacted*, That the said trus-

1794.	tees, or a majority of them, shall have power to settle and determine all disputes concerning the bounds of said lots, and establish such rules for the regular building thereon, as to them shall seem convenient, and in case of death, resignation, or other disability of any of the said trustees, it shall be lawful for the other trustees to supply such vacancy. And the trustees so elected, shall be vested with the same power and authority as those particularly mentioned in this act. <i>Provided nevertheless,</i> the trustees never shall have power to alter the present form, plan, or figure of said town, or to make sale of the lots set apart for public use. <i>Provided however,</i> that nothing herein contained shall be so construed as to impair any contract that may have been entered into between the said James Francis Moore and those who may have purchased lots of him previous to the passing of this act. <i>Provided however, and be it further enacted,</i> That this act shall not be construed to affect the right, claim or interest of any other person or persons whatsoever, than the said James Francis Moore, to the said tract of land, or to affect any suit or suits that now are or hereafter may be brought either to stay waste, or for rents, profits and damages.
Powers.	
Vacancies how filled.	
Proviso.	
Proviso.	
Proviso.	
Commencement.	SEC. 3. This act shall be in force from the passage thereof.

CHAPTER CLV.

An ACT authorising the Governor to offer a reward for apprehending Criminals in certain cases.

Approved December 13, 1794.

SECTION 1. *BE it enacted by the general assembly,* That if any person charged with, or convicted of treason, murder, or other capital crimes, shall break prison, escape, or flee from justice and abscond or secret himself; that in such case it shall be lawful for the governor for the time being, if he shall judge it necessary, to offer any reward not exceeding five hundred dollars, for apprehending and delivering such person into the custody of such jailor as he may direct. And the person or persons so apprehending and delivering any such person as aforesaid, and producing the jailor's receipt for the body of such person to the court of oyer and terminer, it shall be

III. YEAR OF THE COMMONWEALTH.

235

their duty to certify to the auditor of public accounts, that such person or persons are entitled to the reward upon the facts being proved to them, and the auditor shall issue his warrant on the treasurer for the payment thereof.

1794.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER CLVI.

An ACT giving further time to the owners of Platts and Certificates to return the same.

Approved December 13, 1794.

Vide the prelection to chap. 38, ante.

WHEREAS it is represented to the present general assembly that the law giving further time to the owners of platts and certificates of surveys to return the same to the register's office, will expire at the end of this present session; therefore,

SECTION 1. *Be it enacted by the general assembly,* That from and after the end of this present session, a further time of one year shall be given for that purpose.

SEC. 2. *And be it further enacted,* That the register of this state shall receive and issue grants on all certificates of survey which were in the register's office of Virginia at the time the separation took place and on which grants have not issued.

CHAPTER CLVII.

An ACT concerning Grand Juries.

Approved, December 17, 1794.

The reader will observe the extent of the repealing clause. This act was repealed in 1796, (Chap. 262.) But that repeal under the act of 1789, did not revive any former laws repealed by the present. The inference is, that at this time no act of the British parliament, no act of assembly of Virginia, nor any act of Kentucky prior to the passage of this act, which relates to grand juries, or any thing in this act itself, is in force.

SECTION 1. *BE it enacted by the general assembly,* That all laws and parts of law heretofore in force in this state, respecting grand juries, shall be and the same is hereby repealed. And for the more regular and certain enquiry into the breaches of penal laws in the several courts of this commonwealth by grand juries,

Former laws
repealed.

1794.

Sheriff's duty
to summon
grand juries &
when.
Number and
qualification of
grand jurors.

Power and ju-
risdiction,

Where a suffi-
cient number
do not attend,
how completed

Non attendants
how proceeded
against.

Their fine.

Foreman to be
appointed.

His oath.

SEC. 2. *Be it enacted*, That the sheriff of every county within which a court of criminal jurisdiction shall be held, shall at least one month before the meeting of such court, summon twenty-four respectable and discreet house-keepers, within his county, not being ordinary keepers, constables, surveyors of roads, owners or occupiers of mills, to appear at such next succeeding court within his county, on the first day thereof, and the said twenty-four house-keepers, or any sixteen of them appearing, shall be a grand jury, who shall be sworn to enquire of and present all treasons, murders, felonies, breaches of the penal laws, and other misdemeanors whatsoever, which shall have been committed or done within the county for which they are impaneled, at any time since the preceeding term of the said court. And if a sufficient number of the said house-keepers shall not attend on the first day of the court, the sheriff shall summon from the by-standing house-keepers, of the description aforesaid, a sufficient number, together with those attending, to make a grand jury. And the court shall order the non-attending house-keepers summoned as aforesaid, to be summoned to attend the next succeeding court to shew cause if any they have, why they did not attend as grand jurors, and upon such last mentioned summons being returned executed, the court shall proceed to fine the said non-attendants, in any sum not exceeding five dollars; unless good cause, in the opinion of the court, be shewn for such non-attendance; and should any sheriff, whose duty it is by this act to summon a grand jury, fail or refuse to do the same, the court shall proceed to fine him, being present, or being absent, on a summons to appear being returned executed by the coroner, in any sum not exceeding twenty dollars, unless he shall shew to the court good cause in excuse.

SEC. 3. *And be it enacted*, That the court shall nominate the foreman of the grand jury, who shall take the following oath, to be administered by the clerk: "Saving yourself and fellow jurors, you as foreman of this inquest, shall diligently enquire into and true presentment make, of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service; you shall present no person through malice or ill will; nor shall you leave any unrepresented through fear, favor or affection, or for any

III. YEAR OF THE COMMONWEALTH.

237

reward, hope, or promise thereof; but in all your presentments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and judgment: so help you God." The following oath shall be administered to the other jurors: "The same oath that A. B. your foreman hath now taken before you, on his part; you, and each of you, shall well and truly observe and keep on your respective parts: So help you God." But should any juror scruple taking an oath, he shall affirm in manner and form aforesaid, leaving out, "So help you God." The grand jury in making any presentment, shall specify the crime presented, and the time and place when it was committed, and by whom, and shall set down at the foot of such presentment, the name of the person or persons on whose information the presentment shall be made, and where they severally reside, whether they be of the grand jury or not. And such grand juries, having presented all such matters as come to their knowledge, shall be discharged. Upon every presentment by a grand jury, the clerk shall issue a summons stating therein the presentment by way of charge and calling upon the party to appear at the next succeeding court and shew cause, if any they have, why he or she should not be fined or otherwise punished according to law. And the persons whose name shall be set at the foot of any presentment, shall also be summoned to attend at the same time as witnesses, and the summonses being returned executed, the court shall have power and authority to proceed to hear and determine the matter presented in all cases, where the penalty incurred shall be less than fifteen dollars in a summary way without a jury; but in all cases, where the penalty shall exceed fifteen dollars, or where it shall be uncertain, the trial shall be by a jury, who shall find the amount of the penalty or damages to be inflicted, and for which the court shall enter judgment and award execution according to law. *Provided*, That any court which now has or hereafter may have jurisdiction in capital cases, shall not take cognizance of penal cases under twenty dollars. And *provided also*, that should any matter or thing be presented in any court, which by the law of the land is not properly cognizable therein, the said court shall cause a copy of such presentment to be delivered to the attorney for the county, who shall, if the nature of the case require

1794

Other jurors' oath.

Duty of the grand jury in making presentments.

Duty of the clerk when presentments are made.

Informants to be summoned. Power and Jurisdiction of the court.

Provido.

Proceedings where the court has not jurisdiction.

1794. it, cause a court to be summoned for the examination of the fact, or otherwise transmit the same to the attorney general, who shall thereupon order the proper process.

Informants to be sworn in court. Persons not of the grand jury, intending to give information to the grand jury respecting any presentable or indictable matter, shall be sworn in court to give testimony on the part of the commonwealth. Should the grand jury be of opinion that the matter of an indictment is sufficiently proved, they shall endorse thereon under the test of their foreman, "a true bill;" but if they should be of opinion that the matter thereof is not sufficiently proved, they shall in like manner endorse "not a true bill;" and in either cases return it into court.

Proceedings on indictments.

Commencement. SEC. 4. This act shall commence and be in force from and after the tenth day of March next.

CHAPTER CLVIII.

An ACT making provision for defraying the expences of Criminal Prosecutions in the Courts of Quarter Sessions, and for other purposes.

Approved December 17, 1794.

This act is connected with the act relative to criminal proceedings, passed in 1796, (Chapter 262) and with an act amending certain penal laws, &c. passed in 1802, (Vol. III. Chap. 34.)

Preamble. WHEREAS no adequate mode is fixed by law, for the regular payment of expences attending the examination of criminals in the courts of quarter sessions, and it is necessary that the same should be provided for.

Courts of Q. S. how and when to certify accounts. SECTION 1. *Be it therefore enacted by the general assembly,* That the several courts of quarter sessions within this commonwealth, having jurisdiction in such trials, shall annually, in the months of September or October, cause to be certified to the auditor of public accounts, all claims for expences accruing after the first day of January next, from the examination and trial of criminals, for the guards, and maintenance of criminals in their counties, for misdemeanors or breaches of the peace, and all other charges, properly chargeable to the public, together with the vouchers on which such claims have been allowed; and the auditor is hereby authorised and required to liquidate and adjust the said claims, and after having converted such of them as are in tobacco (the price whereof is not otherwise settled by law) into money at twelve

Auditor's duty when accounts are certified.

III. YEAR OF THE COMMONWEALTH.

239

shillings and six pence per hundred weight, to grant warrants on the treasury to the respective claimants for the amount of their claims.

1794.

SEC. 2. *And be it further enacted*, That the accounts of all such charges as have been heretofore levied, or which may be assessed in the levy before the first day of January next, by any county court in their respective counties, shall be certified and transmitted by the clerk of such court to the auditor of public accounts, who is hereby directed to liquidate and adjust the same, and after having converted such of them as are in tobacco (the price whereof is not otherwise settled by law) into money at the aforesaid rate, to grant certificates to the respective counties for the amount of their several claims; the payment of which certificates shall be hereafter provided for in such manner as the legislature may direct.

Former expenses how to be certified.

SEC. 3. *And be it further enacted*, That when any persons have been or shall be called on as a witness by either branch of the legislature, they shall be entitled to the same privileges, and receive the same wages for their attendance, as are allowed by law to witnesses attending the court of appeals, and shall also receive the same fee for travelling and reimbursements for ferrriages, and such person shall enter their attendance with the clerk of that branch of the legislature by which they were summoned, and on a certified copy of such attendance being produced to the auditor, he shall liquidate and adjust such claims as above directed, and grant a warrant on the treasurer for the amount thereof.

Witnesses called before the legislature, their allowance

How certified and paid.

SEC. 4. *And be it further enacted*, That the sheriff, *venire* men, and witnesses, who did attend on the third Monday in January last, for the trial of William Montgomery and John Miligan, shall receive the same allowance for such attendance as sheriffs, witnesses and *venire* men, are entitled to for attending the court of oyer and terminer in similar cases; and the said witnesses, sheriff and *venire* men, shall pursue the same method to obtain their allowance, as others are directed to do to obtain theirs.

Allowance to certain sheriffs and venire men

How paid.

SEC. 5. *And be it further enacted*, That the courts of quarter sessions shall certify to the county courts respectively what sum of money may be necessary to provide record books for their said courts, and the county court shall proceed to lay the sum so certified, in their next

Record books for courts of Q. S. how to be procured.

1794.

levy; and the sheriff shall collect the same and account for it to the clerk of the court of quarter sessions, who are hereby authorised to receive the same (allowing the sheriff his usual fees for collecting) and to purchase such books therewith as the courts of quarter sessions may direct.

CHAPTER CLIX.

An ACT giving longer time to the owners of lots in Bardstown and Maysville to improve the same, and for appointing additional trustees to the town of Standford, in the county of Lincoln.

Approved, December 17, 1794.

Preamble.

WHEREAS, the time given to the owners of lots in the town of Bardstown and Maysville to improve the same will shortly expire, and it is judged expedient to prolong the same.

Further time
allowed to im-
prove lots in
Bardstown &
Maysville:

SECTION 1. *Therefore be it enacted by the general assembly,* That the further time of two years be allowed to the owners of lots in Bardstown, and seven years in the town of Maysville, from the end of the present session, to make the requisite improvements thereon, during which time no forfeiture shall accrue for want of such improvements.

Additional
trustees to the
town of Stand-
ford.

SEC. 2. *Be it further enacted,* That William Montgomery, George Davidson, Joseph Ballenger, Jesse Cravens, Jonathan Forbis, and Joel Atkins, gentlemen, be added to the present trustees to the town of Standford, in the county of Lincoln; and the said trustees with those heretofore appointed and their successors, or a majority of them shall have power from time to time, to make regulations agreeably to a law passed in the Virginia assembly, one thousand seven hundred and eighty-six, for the establishing the said town of Standford.

Commence-
ment.

SEC. 3. This act shall commence and be in force from the passage thereof.

CHAPTER CLX.

An ACT for forming a new County from the Counties of Harrison, Scott, and Mason.

Campbell
county formed.

Approved December 17, 1794.

The first section describes the boundary, for which see Chapter 295 of this volume. The remaining sections were temporary and have had their effect.

III. YEAR OF THE COMMONWEALTH.

241

CHAPTER CLXI.

1794.

An ACT concerning the Importation and Emancipation of Slaves.

Approved, December 17th, 1794.

At the January session 1798, an act was passed containing very extensive provisions on nearly every subject relating to slaves or slavery, (Vol. II. Chap. 63.) *Vide* also a little supplemental act passed in 1800, (Vol. II. Chap. 282.)

As this is the first act passed in Kentucky respecting emancipation, it is deemed proper to give the reader a view of the antecedent laws of Virginia, by which slavery was supported and emancipation introduced. They are as follows:

ACTS OF 1753, CHAPTER II. BODY OF LAWS, page 308.

[*An ACT for the better Government of Servants and Slaves.*]

SEC. 2. All persons who have been or shall be imported into this colony, by sea or land, and were not christians in their native country, except Turks and Moors in amity with his majesty, and such who can prove their being free in England, or any other christian country, before they were shipped for transportation hither, shall be accounted and be slaves, and as such be here bought and sold, notwithstanding a conversion to christianity after their importation.

SEC. 3. *And be it further enacted, by the authority aforesaid,* That if any person shall import into this colony, and here sell as a slave, any person or persons who have been free in any christian country, island, or plantation, such importer and seller shall forfeit and pay, to the party from whom such free person shall recover his or her freedom, double the sum for which such free person was sold; to be recovered in any court of record of this colony, with costs, according to the course of the common law, wherein the defendant shall not be admitted to plead in bar any act or statute for limitation of actions.

ACTS OF
VIRGINIA.

ACTS OF 1778, CHAP. I. CHAN. REV. page 80.

[*An ACT for preventing the farther Importation of Slaves.*]

SEC. 1. For preventing the farther importation of slaves into this commonwealth, *Be it enacted by the General Assembly,* that from and after the passing of this act no slave or slaves shall hereafter be imported into this commonwealth by sea or land, nor shall any slaves so imported be sold or bought by any person whatsoever.

SEC. 2. Every person hereafter importing slaves into this commonwealth contrary to this act, shall forfeit and pay the sum of one thousand pounds for every slave so imported; and every person selling or buying any such slaves, shall in like manner forfeit and pay the sum of five hundred pounds for every slave so sold or bought, one moiety of which forfeitures shall be to the use of the commonwealth, and the other moiety to him or them that will sue for the same, to be recovered by action of debt or information in any court of record.

SEC. 3. *And be it further enacted,* That every slave imported into this commonwealth, contrary to the true intent and meaning of this act, shall, upon such importation become free.

SEC. 4. *Provided always,* That this act shall not be construed to extend to those who may incline to remove from any of the United States, and become citizens of this, provided, that within ten days after their removal into the same, they take the following oath before some magistrate of this commonwealth: *I A. B. do swear, that my removal to the state of Virginia was with*

H h

1794
 ACTS OF
 VIRGINIA.

no intention to evade the act for preventing the further importation of slaves within this commonwealth, nor have I brought with me, or will cause to be brought, any slaves, with an intent of selling them, nor have any of the slaves now in my possession been imported from Africa, or any of the West India islands, since the first day of November, 1778. So help me God. Or to travellers and others, making a transient stay in this commonwealth, bringing slaves with them for necessary attendance, and carrying them out again.

SEC. 5. *Provided also, and be it further enacted,* That this act shall not be construed to extend to persons claiming slaves by descent, devise, or marriage, or to any citizens of this commonwealth being now the actual owners and proprietors of slaves residing or being in any of the United States and removing such slaves into this commonwealth.

SEC. 6. *And be it further enacted,* That so much of an act of assembly made in the year one thousand seven hundred and fifty three, entitled "*An act for the better government of servants and slaves,*" as comes within the purview of this act, shall be and the same is hereby repealed.

ACTS OF MAY SESSION, 1782, CHAP. XXI. CHAN. REV. page 159.

[*An ACT to authorise the manumission of slaves.*]

SEC. 1. Whereas applications hath been made to this present general assembly, that those persons who are disposed to emancipate their slaves may be empowered so to do, and the same hath been judged expedient under certain restrictions: *Be it therefore enacted,* That it shall hereafter be lawful for any person, by his or her last will and testament, or by any other instrument in writing, under his or her hand and seal, attested and proved in the county court by two witnesses, or acknowledged by the party in the court of the county where he or she resides, to emancipate and set free, his or her slaves, or any of them, who shall thereupon be entirely and fully discharged from the performance of any contract entered into during servitude, and enjoy as full freedom as if they had been particularly named and freed by this act.

SEC. 2. *Provided always, and be it further enacted,* That all slaves so set free, not being in the judgement of the court, of sound mind and body, or being above the age of forty five years, or being males under the age of twenty-one, or females under the age of eighteen years, shall respectively be supported and maintained by the person so liberating them, or by his or her estate; and upon neglect or refusal so to do, the court of the county where such neglect or refusal may be, is hereby empowered and required, upon application to them made, to order the sheriff to distrain and sell so much of the person's estate as shall be sufficient for that purpose. *Provided also,* that every person by written instrument in his life time, or if by last will and testament, the executors of every person freeing any slave, shall cause to be delivered to him or her, a copy of the instrument or emancipation, attested by the clerk of the court of the county, who shall be paid therefor, by the person emancipating, five shillings, to be collected in the manner of other clerks fees. Every person neglecting or refusing to deliver to any slave by him or her set free, such copy, shall forfeit and pay ten pounds, to be recovered with costs in any court of record, one half thereof to the person suing for the same, and the other to the person to whom such copy ought to have been delivered. It shall be lawful for any justice of the peace to commit to the jail of his county, any emancipated slave travelling out of the county of his or her residence without a copy of the instrument of his or her emancipation, there to remain till such copy is produced and the jailor's fees paid.

SEC. 3. *And be it further enacted,* That in case any slave so liberated shall neglect in any year to pay all taxes and levies imposed or to be imposed by law, the court of the county shall order the sheriff to hire out him or her for so long time as will raise the said taxes and levies; *Provided* sufficient distress cannot be made upon his or her estate; saving nevertheless to all and every person and persons, bodies politic or corporate, and their heirs and successors,

III. YEAR OF THE COMMONWEALTH.

243

other than the person or persons claiming under those so emancipating their slaves, all such right and title as they or any of them could or might claim if this act had never been made.

1794.

ACTS OF 1785, CHAP. 77, page 60.

[An ACT concerning Slaves.]

ACTS OF VIRGINIA.

SEC. 1. *BE it enacted by the General Assembly*, That no persons shall henceforth be slaves within this commonwealth, except such as were so on the first day of this present session of assembly, and the descendants of the females of them. Slaves which shall hereafter be brought into this commonwealth, and kept therein one whole year together, or so long at different times as shall amount to one year, shall be free.

SEC. 2. No negro or mulatto shall be a witness, except in pleas of the commonwealth against negroes or mulattoes, or in civil pleas wherein negroes or mulattoes alone shall be parties.

SEC. 3. No slave shall go from the tenements of his master or other person with whom he lives, without a pass, or some letter or token whereby it may appear that he is proceeding by authority from his master, employer or overseer: if he does, it shall be lawful for any person to apprehend and carry him before a justice of the peace, to be by his order punished with stripes or not, in his discretion.

SEC. 4. No slave shall keep any arms whatever, nor pass unless with written orders from his master or employer, or in his company with arms, from one place to another. Arms in possession of a slave contrary to this prohibition, shall be forfeited to him who will seize them. Riots, routs, unlawful assemblies, trespasses, and seditious speeches, by a slave or slaves, shall be punished with stripes, at the discretion of a justice of the peace, and he who will may apprehend and carry him, her, or them, before such justice.

SEC. 5. *Provided*, That nothing in this act contained shall be construed to extend to those who may incline to remove from any of the United States and become citizens of this, if within ten days after such removal he or she shall take the following oath before some justice of the peace of this commonwealth: "I A. B. do swear that my removal into the State of Virginia was with no intent of evading the laws for preventing the further importation of slaves, nor have I brought with me any slaves with an intention of selling them, nor have any of the slaves which I have brought with me been imported from Africa, or any of the West India islands, since the first day of November, 1778: So help me God." Nor to any persons claiming slaves by descent, marriage, or devise; or to any citizens of this commonwealth, being now the actual owners of slaves within any of the United States and removing such hither; nor to travellers and others making a transient stay, and bringing slaves for necessary attendance, and carrying them out again.

SEC. 6. *And be it further enacted*, That no person whatsoever shall buy, sell, or receive of, to or from a slave, any commodity whatsoever without the leave or consent of the master, owner or overseer of such slave. And if any person shall presume to deal with any slave without such leave or consent, he or she so offending, shall forfeit and pay to the master or owner of such slave four times the value of the thing so bought, sold, or received, to be recovered with costs, by action upon the case, in any court of record within this commonwealth; and shall also forfeit and pay the further sum of five pounds, to any person who will sue for the same, to be recovered with costs, by summons and petition, in the same manner as other debts not exceeding five pounds, nor under twenty five shillings are, or receive on his or her bare back thirty nine lashes well laid on at the public whipping-post, but shall nevertheless be liable to pay the costs of such summons and petition.

SEC. 7. This act shall commence and be in force from and after the first day of January, one thousand seven hundred and eighty-seven.

1794.

ACTS OF
VIRGINIA.

ACTS OF 1785, CHAP. 78, page 61.

[An ACT declaring what Persons shall be deemed Mulattoes.]

SEC. 1. *BE it enacted by the General Assembly,* That every person of whose grandfathers or grandmothers any one is, or shall have been a negro, although all his other progenitors, except that descending from the negro, shall have been white persons, shall be deemed a mulatto; and so every person who shall have one fourth part or more of negro blood, shall, in like manner, be deemed a mulatto.

SEC. 2. This act shall commence and be in force from and after the first day of January, one thousand seven hundred and eighty-seven.

ACTS OF 1786, CHAP. 58, page 38.

[An ACT directing the method of trying Slaves charged with Treason or Felony.]

BE it enacted by the General Assembly, That the justices of every county shall be justices of oyer and terminer for trying slaves charged with treason or felony: which trials shall be by five at the least without juries upon legal evidence at such times as the sheriffs shall appoint, not being less than five nor more than ten days after the offenders shall have been committed to jail. No slave shall be condemned in any such case unless all of the justices sitting upon his or her trial shall agree in opinion that the prisoner is guilty. *Provided always,* That when judgment of death shall be passed upon any such offender there shall be thirty days at least between the time of passing judgment and the day of execution, except in cases of conspiracy, insurrection, or rebellion. The value of a slave condemned to die, who shall suffer accordingly, or before execution of the sentence perish, to be estimated by the justices triers, shall be paid by the public to the owner. One being detained in slavery, and having commenced an action to assert his freedom, shall be prosecuted and tried for any such crime in the same manner as a free man ought to be prosecuted and tried. No person having interest in a slave shall sit upon the trial of such slave.

ACTS OF 1787, CHAP. 37, page 25.

[An ACT for the punishment of persons guilty of stealing or selling Free Persons as Slaves.]

SEC. 1. WHEREAS, several evil disposed persons have seduced or stolen the children of black and mulatto free persons, and have actually disposed of the persons so seduced or stolen as slaves, and punishment adequate to such crimes, not being by law provided for such offenders,

SEC. 2. *Be it enacted,* That any person who shall hereafter be guilty of stealing or selling any free person for a slave, knowing the said person so sold to be free, and thereof shall be lawfully convicted, the person so convicted shall suffer death without benefit of clergy.

ACTS OF 1788, CHAP. 54, page 24.

[An ACT concerning the Importation of Slaves into the District of Kentucky.]

SEC. 1. WHEREAS, many persons who have removed from some other parts of the United States, into the district of Kentucky, and have become citizens of this commonwealth, have failed within ten days after their removal into the same to take the oath or oaths prescribed by two acts of assembly, the one entitled "an act for preventing the further importation of slaves," the other, entitled "an act concerning slaves," to be taken on the importation of the same, although they might with great truth have taken such oaths: and whereas, such failure hath been chiefly, if not altogether, owing to the impracticability of complying with the said acts: *Be it enacted by the general as-*

III. YEAR OF THE COMMONWEALTH.

245

sembly, That such persons as have already removed, or shall remove before the passing of this act, from any part of the United States, into the district of Kentucky, may take the oaths aforesaid, on or before the first day of May, in the year of our Lord, one thousand seven hundred and eighty-nine, and the taking thereof shall be as effectual to avoid the pecuniary penalties of the said acts as if it had been within ten days after the removal of such person.

SEC. 2. All persons who shall remove to the said district from any part of the United States after the passing of this act, may take the oath aforesaid within sixty days after such removal; any law to the contrary notwithstanding. Provided nevertheless, that this act shall not be construed to affect the right of any slave or slaves, or of any person or persons entitled to freedom: But as to all persons who may take the said oaths, on or before the said first day of May, the operation of the said acts, as far as they relate to the freedom of any slave removed, or which before the passing of this act may be removed into the district of Kentucky, shall be, and is hereby suspended for three years; and no suit or suits shall be instituted or proceeded on in any court of this commonwealth for the recovery of the freedom of any such slave, before the expiration of the said term of three years. Provided however, that the suspension aforesaid, shall not be construed to extend to or effect the case of any slave or slaves, or of any person or persons entitled to freedom, who have before the passing of this act instituted a suit or suits for the same, in any court of this commonwealth, nor to any such case in which an adjudication or adjudications shall have been had thereupon.

1794.
ACTS OF
VIRGINIA.

ACTS OF 1789, CHAP. 45, page 26.

[An ACT to amend the act for preventing the farther Importation of Slaves.]

SEC. 1. WHEREAS, it hath been represented to the present general assembly, that many persons who have migrated into this state, and have become citizens of this commonwealth, have failed to take the oath within the time prescribed by the act, entitled "an act for preventing the farther importation of slaves," and that such failure proceeded from their being strangers to the laws of this state, at the time of such removal, and it is reasonable that they should be exonerated from the pecuniary penalties to which they are liable in consequence of such failure: *Be it therefore enacted by the general assembly*, that all persons who have so removed into this state may take the oath aforesaid, on or before the first day of June, in the year of our Lord, one thousand seven hundred and ninety, and the taking thereof shall be as effectual to exonerate them from the pecuniary penalties of the said recited act, as if it had been taken within ten days after the removal of every such person as aforesaid into this state, and that the time in future be extended to sixty days.

SEC. 2. And for perpetuating the certificates of such oath, *Be it further enacted*, That where any person hath taken or shall hereafter take the oath prescribed by the said recited act, that the certificate thereof may be lodged with the clerk of the court of the county where such person resides, who shall enter the same of record, and if required, grant a copy thereof, which shall be as valid and effectual as the original thereof; any law to the contrary notwithstanding.

ACTS OF 1790, CHAP. 11, page 7.

[An ACT for granting relief to certain Persons migrating into this State.]

WHEREAS it hath been represented to this present general assembly, that many persons who have migrated into this state, and have become citizens of this commonwealth, have failed to take the oath within the time prescribed by the act entitled "an act for preventing the farther importation of slaves," and that such failure proceeded from their being strangers to the laws of this state

1794.

at the time of such removal, and it is reasonable that they should be exonerated from the pecuniary penalties, to which they are liable in consequence of such failure. *Be it therefore enacted by the general assembly,* That all persons who have so removed into this state may take the oath aforesaid on or before the first day of October, one thousand seven hundred and ninety-one, and the taking thereof shall be as effectual to exonerate them from the pecuniary penalties of the said recited act, as if it had been taken within the time prescribed by law : Any law to the contrary thereof notwithstanding.

Former laws
repealed.

SECTION 1. *BE it enacted by the general assembly,* That all laws & parts of laws heretofore in force in this state respecting the importation of slaves, shall be and the same are hereby repealed.

Importation
prohibited.

SEC. 2. *And be it further enacted,* That no slave shall be imported into this state from any foreign country, nor shall any slave who has been imported into the United States from any foreign country, since the first day of January, one thousand, seven hundred and eighty-nine, or who may be hereafter imported into the United States from any foreign country, be imported into this state under the penalty of three hundred dollars.

Penalty.

Not to be im-
ported as mer-
chandize.
Penalty.

SEC. 3. *And be it further enacted,* That no slave or slaves shall be imported into this state as merchandize, and any person offending herein, shall forfeit and pay the sum of three hundred dollars for each slave so imported, to be recovered by action of debt or information, in any court having cognizance of the same, one half to the prosecutor, the other half to the use of the commonwealth. This act shall not be extended to prevent any citizen of this state, bringing slaves for his own use, provided they have not been brought into the United States, from any foreign country since the said first day of January, one thousand seven hundred and eighty-nine, nor shall it be construed to prevent persons emigrating to this state, bringing their slaves with them ; but either a citizen of this state or persons emigrating to this state, may bring or cause to be brought to this state any slave or slaves not prohibited by this act.

How recovered.

Not to extend
to slaves bro't.
for use of own-
ers.

Nor slaves bro't
by emigrants
for their own
use.

Slaves how
emancipated.

SEC. 4. *Be it further enacted,* That it shall be lawful for any person by his or her last will and testament, or by any other instrument in writing under his or her hand and seal, attested and proved in the county court by two witnesses, or acknowledged by the party in the court of the county where he or she resides, to emancipate or set free his or her slave or slaves ; who shall thereupon be entirely and fully discharged from the performance of

any contract entered into during servitude, and enjoy as full freedom as if they had been born free. And the said court shall have full power to demand bond and sufficient security of the emancipator, his or her executors or administrators, as the case may be, for the maintenance of any slave or slaves that may be aged or infirm, either of body or mind, to prevent their becoming chargeable to the county. And every slave so emancipated shall have a certificate of their freedom from the clerk of such court on parchment, with the county seal affixed thereto, for which the clerk shall charge the emancipator five shillings; saving however the rights of creditors and every person or persons, bodies politic and corporate, except the heirs or legal representatives of the person so emancipating their slaves. So much of every act heretofore in force concerning the emancipation of slaves is hereby repealed.

SEC. 5. This act shall commence and be in force from the passage thereof.

1794

Saving creditor's rights.

Repealing clause.

Commencement.

CHAPTER CLXII.

An ACT to amend an act entitled "an act to establish a town on the lands of James Wilkinson in Fayette county, and a ferry across Kentucky River."

Approved, December 17, 1793.

WHEREAS, it is represented to the present general assembly, that the trustees appointed for said town have not acted under said appointment: therefore,

SECTION 1. *BE it enacted*, That John Logan, Thomas Todd, Daniel Weisiger, James Roberts and Isaac E. Gano, gentlemen, are hereby appointed trustees for the town of Frankfort. The said trustees or a majority of them, shall have power to settle all disputes concerning the bounds of lots in the said town, and to establish such regulations for the regular building houses thereon as to them shall seem best; they shall have power to form rules for the clearing and cleansing the streets. If any of the owners of lots shall fail or refuse to clear or cleanse their proportion of the streets and alleys, it shall be lawful for the trustees to employ some person to clear the same at the expence of such owner, provided the proportion to each owner shall not be more than one half the

Trustees appointed.

Their powers.

1794.

To have platt
recorded.

To set up stones
at the corner of
the streets.

Further pow-
ers.

Fill vacancies.

Commence-
ment.

streets and alleys opposite such owner's lot or lots, which shall be recovered of such owner before some justice of the peace within the county. The said trustees shall cause a platt of said town with the number of lots, to be recorded in the clerk's office of the county court : and the said trustees shall have power to employ persons to prepare and set up a stone, at the corner of so many of the streets as to them shall seem necessary for the better ascertaining of the bounds of the lots within the said town, to be paid for by the proprietors of the said lots, provided the expence does not exceed thirty dollars. The said trustees shall have power to convey part of Montgomery street in exchange for part of lots No. 152, No. 32, and No. being the lot that was sold to Mr. Tra-
bue in order that the south-east end of said street may be altered so as to pass through the said lots ; provided that said exchange be made by consent of the owners of said lots. In case of death, resignation or other legal disability of any one or more of the said trustees, it shall be lawful for the remaining trustees to supply such vacancy, and the person or persons so appointed, shall have the same power as those appointed by this act.

SEC. 2. This act shall commence and be in force from and after the passage thereof.

CHAPTER CLXIII.

An ACT concerning Sheriffs.

Approved, December 17, 1794.

Vide the prælection to chap. 16, ante.

Former Sheriff
to collect ar-
rears, &c.

SECTION 1. *BE it enacted*, That the sheriffs in this state, whether chosen by the people, or appointed by the executive, and their deputies, shall be allowed to continue in office as collectors, until they have finally completed the collection of the taxes, or arrearages of taxes, that have become due, during the time for which such sheriffs were chosen or appointed ; or where the office of sheriff has become vacant by death, resignation, or otherwise, the sheriff appointed to fill such vacancy and his deputies, shall continue to act as collectors, until they shall have finally completed the collection of all taxes or arrearages of taxes that become due, during the time for which their predecessor was chosen, or appointed : and

the former sheriffs shall have power and authority to make distress on the goods or estate of any person, who may be chargeable with any such taxes as aforesaid, in case of neglect or refusal to pay them, when called on by such former sheriffs in the same manner and under the same regulations as are now directed by law, in case of sheriffs making distress for taxes: and the auditor shall have power and authority to proceed against any such former sheriff, in case of neglect or refusal to account for the taxes by him received, in the same manner as if he was still in office.

1794.

Powers of former sheriffs.

And the former sheriffs shall also have power to collect all officers' fees, put into their hands at any time before the passage of this law, and shall have authority in case of neglect or refusal of any person owing such fees to pay the same, to make distress on the goods or estate of the person so refusing or neglecting; under the same rules and regulations as are now directed by law for detaining for such fees, and shall be subject to the same proceedings for failing or refusing to collect, or pay such fees, when collected, to the respective owners as the law now prescribes against sheriffs for the same neglect or refusal.

Also to collect officers' fees.

Provided however, That nothing herein contained shall be so construed as to give any sheriff, collectors or their deputies, more than three years, to be computed from the expiration of the term for which they were appointed, or elected, to make their collections, agreeable to this act.

Provide,

SEC. 2. *And be it further enacted,* That no person who has heretofore been chosen, or appointed to the office of sheriff in any county, shall be eligible to said office in any other county, for the term of six years, from the date of his being chosen or appointed sheriff.

Disqualification

SEC. 3. *And be it further enacted,* That in case of the death or absence of any delinquent sheriff, or collector, ten days notice given to the security or securities, or legal representatives of such deceased or absentee or either of them, previous to the day on which the motion is to made in court, shall be sufficient for such court to grant judgment, for the amount of arrearages of taxes due from such delinquent sheriff or collector, against his security or securities, or legal representatives, or either of them, as if the notice had been given to such delinquent.

Proceedings against securities

1794.

CHAPTER CLXIV.

An ACT to amend and reduce into one act, the several acts concerning Strays.

Approved December 18. 1794.

Vide the prelection on chap. 19, ante.

Duty of persons
taking up a
stray horse,
mare or colt.

Proceedings
thereon.

Duty of taker
up of cattle,
sheep or goat.

Proceedings
thereon.

Fee to the jus-
tice and clerk.

SECTION 1. *BE it enacted by the general assembly,* That every person who shall take up any stray horse, mare, or colt, shall within ten days take the same before some justice of the peace of the county where such stray shall be taken up, and make oath before such justice that the same was taken up at his or her plantation, and place of residence in said county, and that the marks or brands have not been altered since the taking up; the said justice shall then issue his warrant to three disinterested housekeepers in the neighborhood, unless they can be otherwise had, causing them to come before him to appraise said stray, after they or any two of them being sworn to appraise such stray, without partiality, favor or affection; which appraisement together with the marks, brands, stature, colour and age of such horse, mare, or colt, shall be entered in a book to be kept by said justice, and certified under his hand, and transmitted to the clerk of such county, within twenty days after the same is taken, who shall enter the same in a book to be by him kept for that purpose, and the taker up shall pay to the clerk one shilling for making such entry, to be paid and collected as his other fees; and any person who shall take up any head of neat cattle, sheep, hog, or goat, shall cause the same to be viewed by some householder of the county where the same shall happen, and shall immediately go with such housekeeper before a justice of the county and make oath before him as is required in taking up a stray horse, mare, or colt, and then such justice shall take from such housekeeper upon oath, a particular description of the marks, brands, colour, and age of every such neat cattle, sheep, hog, or goat; and such justice shall cause the said strays to be appraised in like manner as is required to be done in case of a horse, mare, or colt, which description and valuation shall be entered by such justice in a book kept by him as aforesaid; and by such justice transmitted to the clerk of the county to be by him kept as before directed. And the taker up shall pay the justice one shilling, and the clerk one shil-

III. YEAR OF THE COMMONWEALTH.

251

king, for every entry so made by them ; and every such clerk shall cause a copy of such description and valuation of every neat cattle, sheep, hog, and goat, to be publicly affixed at the court-house door of his county, on two several court days next after the same shall be transmitted to him, for which he shall receive the same fee as for entering the same in a book. *Provided*, That if two or more strays of the same species, are taken up by the same person at the same time, they shall be included in one entry and in one advertisement, and in such case such justice and clerk shall receive no more pay than for one of such species. And for a reward of taking up, there shall be paid by the owner six shillings for every horse, mare, or colt, and for every head of neat cattle two shillings, and for every sheep or goat, one shilling, and for every hog above a year old, one shilling, and all reasonable charges. And every person taking up a stray horse, mare, or colt, shall within two months after the same is appraised, provided the owner shall not have claimed his property during that time, transmit to the public printer, a particular description of such stray or strays, and the valuation thereof, together with the name of the county and place of residence, certified by the clerk of the county, or justice before whom such stray was appraised, to be advertised three weeks in the Kentucky Gazette, for which the printer may demand two shillings for the first time of advertising, and one shilling for every time afterwards ; and when there are two or more strays in the same advertisement, such printer shall not demand more than one half the sum for such additional stray or strays or each of them, as is allowed in case there is but one. And if no owner appears and proves his property, within two years after such publication, the property shall be vested in the taker up, nevertheless the former owner may at any time thereafter, by proving his property, recover the valuation money. And if any person shall trade, sell, or take away any such stray out of the state, for any purpose whatever, he or she so offending shall forfeit and pay the sum of fifty pounds, to be recovered by any person suing for the same in any court of record within this commonwealth having cognizance thereof, the one half to the informer, and the other half to the commonwealth. And where the owner of any stray head of neat cattle, sheep, hog, or goat, does not

1794.

Duty of clerk.

Proviso.

Reward to taker up.

Taker up to advertise strays in public gazette.

Printer's fee.

When the property of a horse &c is vested in the taker up.

Penalty for selling, trading or removing out of the state.

1794.

When the property of cattle, &c. vested in taker up.

Who may or may not take up strays.

Duty of persons taking up strays out of the settlement.

Proceedings thereon.

Where the taker up is not qualified.

Reward to the taker up.

Stray to be sold where no owner claims it in a certain time. Proceeds lodged in the treasury.

How former owner may recover the valuation.

Penalty on the justice for failing to pay into the treasury.

prove his property within twelve months after the same has been published at the door of the court-house, and where the valuation does not exceed twenty shillings, the property shall be vested in the taker up. But when the valuation exceeds twenty shillings and no owner appears within the time aforesaid, the property shall also be vested in the taker up. Nevertheless the former owner may at any time, by proving his property, recover the valuation. And it shall not be lawful for any person to take up any stray (except such as shall be hereafter excepted) unless he shall have a freehold, be a tenant for three years, or have a bond for the land on which he resides. Any person finding any stray horse, mare, or colt, running at large without the settlement of this state, may take up the same, and shall immediately carry such stray or strays before the nearest justice of the peace, and make oath that he hath not altered the marks or brands of such stray or strays since taking up, and if the taker up shall have a freehold, be a tenant by lease for three years, or have a bond for the land on which he resides within that county, it may and shall be lawful for him to post such stray or strays as heretofore directed by this act, as if the same had been taken up on his plantation or place of residence. And when the taker up shall not be qualified as aforesaid, he shall take the oaths before required and deliver up such stray or strays to the said justice, who shall cause the same to be dealt with as is directed by this act. And the owner on proving his property shall pay the taker up three dollars, and all reasonable charges. But if no owner appears to prove his property within one year, such stray or strays shall be sold to the highest bidder, giving public notice of such sale, two months previous thereto; and after paying the taker up three dollars for his trouble, and all other reasonable charges paid, the balance shall be put into the public treasury by the said justice, who shall take a receipt for the same. Nevertheless the former owner, at any time within three years after taking up, by proving his property before any county court in this commonwealth, and obtaining a certificate thereof from the clerk of said court to the treasurer, shall receive the balance aforesaid. And when any justice shall fail to pay any money for any stray heretofore or hereafter sold agreeably to this act, into the public treasury within three

months after the passage hereof, or after selling such stray or strays, such justice shall forfeit and pay the sum of twenty dollars, with costs, to be recovered on motion of the auditor, in any court of quarter sessions in this state, or superior court having jurisdiction in similar cases, for the use of the commonwealth, or by action of debt or information in the court of quarter sessions in the county where such justice may reside, one half to the use of the commonwealth and the other to the use of any person suing for the same, and moreover be liable to pay the price of such stray or strays with interest thereon.

1794.

SEC. 2. *And be it further enacted*, That if any stray taken up as aforesaid shall die or get away before the owner shall claim his or her right, the taker up shall not be answerable for the same. And if any person shall take up any stray, at any other place within the inhabitants than his or her plantation or place of residence, or without being qualified as required by this act, he shall forfeit and pay ten dollars with costs, recoverable before any justice in the county where the offence shall be committed; or not having property sufficient to pay such fine, he shall be liable to be confined one month in the jail of the county where he may be found, by a warrant under the hand and seal of any justice of the peace directed to the sheriff, who shall confine such offending person accordingly; the prison fees of said delinquent shall be paid by the county. *Nevertheless* such delinquent shall be liable to repay such fees to the county, should he thereafter possess property sufficient. And any person taking up a stray out of the limits of the settlement of this state, and failing to comply with the requisitions of this act, shall be subject to the same penalties. And if any person taking up any stray of any species fails to comply with the requisitions of this act, he shall for every such offence forfeit and pay to the informer the sum of ten dollars with costs, recoverable before any justice of the county where such offence shall be committed.

Taker up not answerable in certain cases.

Penalty on persons acting contrary to law.

On persons taking up strays out of the settlement.

On persons taking up any species of strays

SEC. 3. *And be it further enacted*, That the justices of the county courts of each county within this state, shall within three months after the passage of this act, cause a pound to be made at the several court-houses, and in all new counties, within three months after the place for erecting the public buildings is fixed upon, with a good and sufficient fence, gate, lock and key, where all strays

Pounds to be erected.

1794. **horses or mares above two years old, taken up within twenty miles of the court-house shall be kept on the first day of every court for three courts successively, after the same is taken up, from twelve till four o'clock the same day, that the owner may have an opportunity of claiming his or her property ; and any person taking up any stray horse, mare, or colt, not exceeding two years old, shall not be compelled to exhibit such stray or strays at the court house, but shall deal with them in other respects as is directed in this act, and shall moreover advertise the same at the door of the court house as is required in case of any stray cattle, sheep, hog, or goat ; and where any person taking up any stray horse or mare, more than two years old, resides twenty miles from the court house, he shall not be compelled to exhibit such stray or strays more than once in the pound, which shall be on the first day of some court within six months after taking up, provided such taker up causes a particular description of such stray or strays to be advertised at the door of the court house, on two several court days before the same is put into the pound. And the justices of the county court of said county, failing to have such pounds erected, shall forfeit and pay the sum of twenty pounds for every court thereafter the same is neglected ; and until such pound is erected, no person taking up any stray horse or mare, shall be liable to any penalty for not exhibiting the same therein. And the justices of the county court shall appoint some person to take care of said pound, and keep the same in repair, whose duty it shall be to attend at the said pound on the several court days during the time such strays are directed to continue therein, with the key of the same, and the said justices shall cause the expence attending the erecting and keeping the said pound, together with a reasonable allowance to the person taking care of the same, to be paid out of the county levy ; and any person being appointed, and undertaking to take care of the said pound, and failing to discharge his duty agreeably to the directions of this act, shall forfeit and pay to the informer, the sum of six shillings for every such offence, with costs, recoverable before any justice of the county where such offence shall be committed.**
- Stray notices, &c to be exhibited therein.**
- Mode to be pursued where stray does not exceed 2 years old.**
- Where taker up resides 20 miles from court-house.**
- Penalty on the justices failing to have pounds erected.**
- Persons to be appointed to take care thereof. His duty.**
- Penalty on his neglect.**
- Penalty on persons acting contrary to this act**
- SEC. 4. And be it further enacted, That any person or persons acting contrary to this act, shall forfeit and pay**

III. YEAR OF THE COMMONWEALTH.

255

ten dollars for every such offence, recoverable with costs by any person suing for the same, before any justice of the peace within this commonwealth. All and every act or acts concerning strays, made heretofore, shall be, and are hereby repealed. Nothing contained in this act shall be so construed as to affect any suit, information or prosecution commenced for any penalties inflicted by any former laws on this subject.

1794

Repealing
clause.

Proviso.

SEC. 6. This act shall commence and be in force from and after the tenth of March next.

Commence-
ment.

CHAPTER CLXV.

An ACT to amend an act entitled "an act to regulate and discipline the Militia of this commonwealth, and for other purposes."

Approved December 18, 1794.

Vide the observations on Chapter 17, ante.

CHAPTER CLXVI.

An ACT to amend an act, entitled "an act to appoint Commissioners for the Division of Lands."

Approved December 20, 1794.

Vide the prelection to Chapter 50, ante.

WHEREAS, by an act passed at the second session of the general assembly, entitled "an act to appoint commissioners for the division of lands," no provision is made for division of lands held in conjunction by citizens of this state, or where one of the parties may be an infant: for remedy whereof,

Preamble.

SECTION 1. *BE it enacted by the general assembly,* That where lands are held in conjunction by citizens of this state, and either party may refuse, when called on for that purpose, to divide the same, it shall and may be lawful for the other to proceed in the same manner to obtain such division, as is by the above recited act directed, where one of the parties reside out of this state; and when either party shall be an infant or *feme covert*, it shall and may be lawful for the guardian of such infant or infants, or the husband of such *feme covert*, to make a division of any land or lands held in conjunction by such infants or *feme covert* with any other person or persons;

How a division
of lands held in
conjunction by
citizens of this
state may be
obtained.

When either
party is an in-
fant or *feme*
covert.

1794. and all such divisions shall be recorded in the county where the land so divided may lie. And if the person or persons holding lands in conjunction with such infants or *feme covert* do not attend to have such division made by themselves or agents, or if the guardian of such infant or infants, or husband of such *feme covert*, when called upon by the other party, shall refuse to attend, in either case the party requiring such division may proceed in like manner as is directed by the before recited act; and when any person may desire a division of lands held in conjunction with an infant or infants, and such infant or infants have no guardian, it shall and may be lawful for the party desiring such division, to have the same made by the commissioners in like manner as is directed by the said recited act. *Provided however*, that nothing herein contained shall be so construed as to prevent any infant or *feme covert* from having a re-division within one year after such infant may arrive at age, or such *feme covert* become sole, as the case may be: *Provided* it shall appear to the court of the county in which such land may lie, that any fraud was practised in making such division to the injury of such infant or *feme covert*. *Provided also*, That such re-division shall not effect any actual settlement, made in consequence of the first division. And the clerk may demand and receive three shillings for every record made agreeably to this and the said recited act, to be paid by the party requiring the business to be done.

How one party may proceed if the other will not attend to have the division made.

Proviso.

Proviso.

Commencement.

SEC. 3. This act shall be in force from the passage thereof.

CHAPTER CLXVII.

An ACT to ascertain the Boundaries of Lands, and for other purposes.

Approved, December 20, 1794.

Vide the prelection to chap. 50, ante.

Preamble.

WHEREAS, many inconveniencies may arise to the citizens of this commonwealth in case of the death of the only person or persons by which their improvements, boundaries, and the specialty of their entries can be established, and on which their titles to land depend: for remedy whereof,

SECTION 1. *Be it enacted by the general assembly,*

That it shall and may be lawful for the county court, on application of any person or persons claiming land within the said county, to order their clerk to issue a warrant directed to three or more justices of the peace for the county, or other fit persons who shall be named commissioners, they or any two of them to attend such person or persons making application for the same, at their improvement, or boundary of their lands, or any special place called for in their entry; and the commissioners so appointed, shall have full power, and they are hereby required by their warrant directed to the constable or some other fit person who will execute the same, to cause to come before them such witness or witnesses as well without as within the county, as the person or persons about to establish his or their improvements, boundary or any special place called for in the entry may require; and the said commissioners are hereby authorised to examine on oath the said witness or witnesses, touching the premises and take the same in writing, which shall be signed by the deponent or deponents, and tested by the commissioners, who shall make return thereof to the clerk of the court, and the clerk shall enter the same on record; and such deposition or depositions in case of the death of the deponent or deponents, shall be as valid in a court of justice as the testimony of the said deponent or deponents would be if living, and taken in open court; and every person making application to the court for the purposes aforesaid, shall have to attend him or them to his improvement, boundary, or special place called for in his entry about to be proved, two or more disinterested persons being residents of said county, who shall be present when the witness or witnesses are sworn and examined. And it shall and may be lawful, if to the commissioners it appear necessary, to cause the line trees to be marked afresh, or do whatsoever else in their judgment may be deemed proper to perpetuate the improvement, boundary, or special place called for in the entry, on which the title to such land or lands may depend.

Provided however, that any thing done in pursuance of this act, shall in no wise affect the title of the aforesaid land or lands adjacent, or interfering claims of any other person or persons, bodies politic or corporate, but only relate to the boundary of the lands, scite of improvement, or any special place called for in the entry.

K k

1794.

Proceedings to perpetuate improvement, &c.

Commissioners duty & power.

Compel witnesses to attend.

take examination.

and return it to court.

shall be valid if witnesses die.

To take witnesses to establish improvements.

To mark line trees afresh.

Proviso.

1794

Notice to owners of adjacent lands.

If out of the state to be published in Kentucky Gazette.

SEC. 2. Any person or persons applying for commissioners agreeably to this act, shall give fifteen days previous notice to the owner or owners, their agents or attorneys if known, who may have lands adjoining, of the time and place of meeting, to prove their boundary, improvement, or special place called for in his entry; and if the owner or owners, their agents or attorneys are not known, or reside out of this state, the applicant shall have the same published three weeks successively in the Kentucky Gazette, describing as particularly as may be the improvement, boundary or special place called for in the entry about to be proved.

Fees to clerk.

To commissioners.
Allowance to witnesses.

Penalty for refusing to attend.

Commencement.

SEC. 3. The clerk shall be allowed three shillings for issuing a warrant to the commissioners, and three shillings for recording each deposition; and the commissioners shall be allowed four shillings per day for their services; each witness shall have the same allowance made him as he would be entitled to, provided he was summoned to attend court, and shall be subject to the like penalties and forfeitures in case of his failing or refusing to attend: and the whole shall be at the cost and expence of the party applying to have the business done.

SEC. 4. This act shall commence and be in force from and after the passage thereof.

CHAPTER CLXVIII.

An ACT establishing an Inspection of Flour and Hemp.

Approved December 20, 1794.

Vide the prelection to chapter 58.

Penalty.

WHEREAS it is necessary, and good policy requires, that our flour and hemp trade should be put upon a respectable footing, which can only be done by establishing such regulations as will prevent the manufacturer from bringing to market such flour and hemp as will not pass inspection, and entitle the merchant to preference in a foreign market:

Inspections established.

SECTION 1. *BE it enacted by the general assembly,* That an inspection of flour and hemp be established in the counties of Washington, Jefferson, Harrison, Fayette, Mason, Franklin, Mercer, Bourbon, Logan, Woodford, Hardin, and Nelson, at such place in each county as shall be directed by the county courts, and for ascer-

III. YEAR OF THE COMMONWEALTH.

259

taining the condition of such flour as ought to pass inspection, and the duty of the inspectors.

1794.

SEC. 2. *Be it enacted*, That the barrels shall be made of sound, well seasoned timber, of a sufficient thickness, and be hooped with twelve hoops on each, and to contain not less than one hundred and ninety-six, nor more than two hundred and four pounds weight of nett flour. The inspectors shall mark on each cask by them inspected, the name of the place where it was inspected, and the quality whether superfine, fine or second, and give the owner a certificate of the number of barrels so by them inspected, distinguishing therein the quantities and qualities of each kind.

Size of flour barrels.

Inspectors duty as to flour.

SEC. 3. *Be it further enacted*, That it shall and may be lawful for the owners of mills in any of the said counties, to call on the inspectors of flour, for his county, to inspect the same at his or her mill, and the inspectors, if convenient, may attend and inspect the same, and give certificates as aforesaid. The county courts of each county as aforesaid, shall appoint two reputable and fit persons for inspectors of flour and hemp, in each county, who shall take an oath for the faithful performance of their duty, and shall receive for their services three pence per barrel, to be paid by the owner. *Provided however*, that the county courts shall not direct an inspection to be established at any place under this act, unless the proprietor of the land shall give bond and approved security to the justices of said court and their successors, for building such ware house for the reception of flour and hemp at the place so appointed, within such time as they shall direct, and furnishing weights and scales at his or her own expence : *Provided however*, that the said courts may appoint the inspectors aforesaid without fixing on any place and taking bond as aforesaid. And for the direction in the inspection of hemp,

Owners of mills to call on inspectors, and for what.

Inspectors in each county.

To take oath, Their fees, *Provide*.

Provide.

SEC. 4. *Be it enacted*, That no hemp shall be deemed merchantable, that is not winter or water rotted, dry, bright and clean, and well bound in bundles of at least one hundred weight each ; and the inspectors shall receive for their services three pence per hundred weight. The owner of any ware house built under the directions of this act, shall receive all the inspected flour and hemp, brought to the same, and shall receipt to the owners for the same, and shall deliver it to the owner or his or her

Qualities of hemp.

Inspectors fees for hemp.

Duty of owners of ware houses.

1794. order for exportation, upon demand, and shall receive for
 storage and his trouble, six pence per barrel of flour, if
 such barrel does not remain more than three months in
 the ware house, and one penny per month for every month
 any barrel may remain more than three months aforesaid,
 and six pence per hundred weight for hemp, should it re-
 main no longer than six months, and one penny per month
 for each hundred afterwards, that remains in the ware
 house for a longer time.

Commence- SEC. 5. This act shall commence and be in force from
 ment. the passage thereof.

CHAPTER CLXIX.

*An ACT to amend an act entitled "an act concerning the
 Town of Washington, in the County of Mason," and
 for other purposes.*

Approved, December 29, 1794.

Preamble. WHEREAS by an act passed at the last session of
 assembly entitled an act concerning the town of Wash-
 ington, in the county of Mason, power is therein given
 to the trustees of the said town to levy and collect mo-
 ney from the freehold inhabitants thereof sufficient for
 the purpose therein mentioned, but no mode is pointed
 out by the said recited act for the due collection thereof:
 for remedy whereof,

Trustees to ap- SECTION 1. *Be it enacted by the general assembly,*
 point collector, That the said trustees, or a majority of them, shall have
 and for what. power and authority to appoint a collector annually, for
 the purpose of collecting such sum or sums of money as
 by the said recited act they are empowered to assess,
 taking from the collector so appointed, a bond with such
 security as the said trustees shall approve of, with a pe-
 nalty in double the sum to be collected, which bond shall
 be payable to the said trustees and their successors, and
 with a condition for the faithful execution of his said of-
 fice; and the said collector shall have the same powers to
 collect, have the same allowance for collecting, and be li-
 able to be proceeded against by the said trustees and
 their successors in the same manner for such money as he
 shall or ought to collect and does not pay, as sheriffs are
 by law entitled and subjected to with respect to county
 levies.

Part of a law SEC. 2. *Be it further enacted,* That so much of an act
 repealed.

passed the present session of assembly entitled "An act to establish a town on the lands of James F. Moore, in Jefferson county" that provides that the said act shall not be construed to affect the right, claim, or interest, of any other person or persons whatsoever, than the said James F. Moore, to the tract of land on which the said town is established, or to affect any suit or suits that now are or may be brought either to stay waste or for rents, profits and damages shall be and the same is hereby repealed.

1794.

SEC. 3. *And be it further enacted*, That nothing in the said act contained shall prevent any other person who may have a more legal claim to the land laid off in said town than the said Moore, from recovering the money arising from the sale of the said lots from the said James F. Moore, his heirs, &c.

Owners of a better title than J. F. Moore to recover purchase money.

SEC. 4. *And for the better security of such persons, Be it further enacted*, That before the said recited act shall take effect, the said James F. Moore, shall enter bond with security, to be approved of by the county court of Jefferson, payable to the governor of this state, and his successors, in the penalty of one thousand pounds conditioned for the true and faithful payment of all and every sum or sums of money which the said James F. Moore may receive from the sale of lots in the said town, and all rents and profits and damages, for any waste done or committed by the said James F. Moore, upon the said land at any time prior to the passage of this act, to such person or persons as shall at any time hereafter be adjudged to have a better title to the said land, than the said James F. Moore; and if the condition of such bond be broken, such person or persons shall have a right to bring suit on such bond in the name of the governor, against the said James F. Moore, and his security or securities, his and their heirs, executors and administrators, for recovery of such sum or sums as shall be adjudged to him, her, or them, by reason of the breach of the said bond, until the whole of the penalty of the said bond be recovered.

Regulations before former act to take effect.

SEC. 5. This act shall be in force from the passage thereof.

Commencement.

1794.

CHAPTER CLXX.

An ACT concerning Boat-Men.

Approved December 20, 1794.

This act is a solitary fragment of the admiralty law of the colony of Virginia.

Persons enter-
ing into con-
tract and failing
to comply,

How proceed-
ed against.

Fee to sheriff
or constable.

Penalty.

Power of own-
er over person
contracting.

Commence-
ment.

SECTION 1. *BE it enacted by the general assembly,* That when any owner or supercargo of a boat or vessel lying within any port or place within this state, and destined to any port or place either within or without this commonwealth, shall enter into any bargain or contract in writing with any person to serve such owner or supercargo, on board any such boat or vessel, and shall receive any part of the consideration, to be expressed in such writing for such service, and shall afterwards fail or refuse to perform such bargain or contract; it shall be lawful for such owner or supercargo to apply to any justice of the peace, and upon shewing to such justice such bargain and contract as aforesaid, it shall be lawful for such justice and he is required to issue his warrant, specially describing therein the person named in such bargain or contract and intended to be apprehended by such warrant, commanding the sheriff or any constable to apprehend such person and deliver him to such owner or supercargo, on board any such boat or vessel; and the sheriff or constable into whose hands such warrant may come, shall immediately proceed to execute the same, under the directions of such owner or supercargo, and for so doing such sheriff or constable shall receive the sum of four pence for every mile he shall travel in the execution of his office, to be paid by the person employing him whether owner or supercargo, to be deducted from such person's wages; and should any sheriff or constable refuse or fail to execute such warrant without good cause for so doing, he shall forfeit and pay to the person obtaining the same, the sum of five dollars.

SEC. 2. *And be it further enacted,* That such owner or supercargo shall have power and authority to detain any person so delivered him as aforesaid on board such boat or vessel, and to compel him to perform his contract or service.

SEC. 3. This act to be in force from the passage thereof.

III. YEAR OF THE COMMONWEALTH.

268

CHAPTER CLXXI.

1794.

An ACT concerning the erection of a Public Jail, and for other purposes.

Approved, December 20, 1794.

SECTION 1. *BE it enacted by the general assembly,* That the sum of fifteen hundred dollars shall be appropriated for the purpose of erecting a public jail at the seat of government: Harry Innis, William Murray, Thomas Todd, John Logan, and Baker Ewing, gentlemen, be and they are hereby appointed commissioners to erect the said jail; the said commissioners shall have power to contract with any person or persons to build the said jail, and shall certify to the auditor of public accounts, from time to time, the sum such person or persons shall be entitled to by virtue of such contract; and it shall be the duty of the auditor to audit the same and issue a warrant on the treasury therefor. *Provided* that such certificates shall not amount to a larger sum than that hereby appropriated. *And provided always,* that the said commissioners shall not have power to contract for the payment of a larger sum than is hereby appropriated for erecting and completely finishing the said jail.

Money appropriated.

Commissioners and their powers.

Duty of the auditor.

Proviso.

Proviso.

SEC. 2. *Be it further enacted,* That the sum of one hundred and fifty pounds be appropriated for the purpose of finishing the capitol, under the direction of the directors of the public buildings: and the sum of three hundred dollars be divided among the said directors according to their attendance, as a full compensation for their trouble and expence in superintending the building and completely finishing the capitol; the sum of eighty-six dollars shall be paid to the persons who acted as clerks to the directors aforesaid, to be divided among them according to their services performed by each; and the sum of twelve dollars shall be paid Harry Innis, Esq. to reimburse him his expences in paying chain men in laying out the lots, &c. belonging to the public in the town of Frankfort; and the auditor is hereby directed to issue his warrant for the several sums aforesaid, on the treasurer, who is hereby authorised and directed to pay the same.

Further sum for finishing the capitol.

Allowance to directors.

And their clerks.

To H. Innis.

Auditor to issue warrants.

SEC. 3. *And be it further enacted,* That as soon as the public jail is completed, the commissioners shall give no-

To remove the courts,

1794.

tice thereof to the judges of the court of oyer and terminer, and the said court shall thenceforward be held in the town of Frankfort, in the room prepared for that purpose; and the court of appeals shall hold their second session after the passage hereof, in Frankfort, in the room aforesaid, and thereafter continue to hold their sessions at the said place, until the future order of the legislature.

Commence-
ment.

SEC. 4. This act shall commence and be in force from and after the passage thereof.

CHAPTER CLXXII.

An ACT concerning the Auditor and Treasurer.

Approved December 20, 1794.

Vide the prelection to chap. I.

Mode in which
auditor to keep
books and ac-
counts.

SECTION 1. *BE it enacted by the general assembly,* That the auditor of public accounts shall keep a book in which he shall make an entry of every warrant which he shall draw on the treasurer for the payment of money, in order as he shall issue them, in such manner as to shew the date, the name of the person in whose favor it was drawn, and the nature of the claim upon which it was founded; he shall begin the first day of January annually, and number each warrant, beginning at number one and continue progressively until the last day of December following, inclusive; he shall carry such entry into a book of general accounts, under separate and distinct heads, shewing the total amount of issues for each department; he shall settle the salaries of every officer of government due on the last day of the present year, and thereafter he shall issue warrants for the quarterly payments of the salaries of every person entitled thereto, as the same shall become due, on the last day of March, June, September and December annually, expressing in such warrant that the same is in whole or in part of the first, second, third and fourth quarter salary, for the year in which it became due, as the nature of the case may require. And where any person shall be appointed to any office, his salary due on the fractional part of the quarter in which he was appointed, shall be settled, and thereafter his salary shall become due as aforesaid; he shall keep a distinct account against each officer of government entitled to an annual salary; he shall state the

III. YEAR OF THE COMMONWEALTH.

265

accounts of all public debtors in each county respectively; he shall report to the general assembly on the sixth day of each annual stated session, a general statement shewing the total amount of every species of taxes which remains due since the establishment of this commonwealth, distinguishing the amount of the arrearages for each year and a statement of the amount of the warrants issued to each department the preceding year.

1794.

Auditor to make report.

SEC. 2. *And be it further enacted*, That the treasurer shall arrange his accounts in such order as to shew the amount of all audited warrants by him received under distinct heads; he shall also state the amount of warrants issued in different years separately; he shall provide, at the public expence, for the use of the treasury, one strong iron chest, one square and one circular punch, one inch diameter.

Made in which treasurer shall keep his books and accounts.

To provide chest, &c.

SEC. 3. *Be it further enacted*, That the auditor shall be allowed the sum of four hundred dollars, and the treasurer the sum of four hundred dollars annually, in lieu of the salary now allowed by law.

Salaries of auditor and treasurer.

SEC. 6. This act shall commence and be in force from and after the first day of January next.

Commencement.

CHAPTER CLXXIII.

An ACT to amend an act entitled "an act establishing a Permanent Revenue."

Approved, December 20, 1794.

Vide the prelection to chap. 10.

SECTION 1. *BE it enacted by the General Assembly*, That so much of the act entitled an act establishing a permanent revenue, as subjects lands to forfeiture, in case they are not listed with a commissioner, and the taxes that may become due thereon with interest, not paid on or before the fourth day of February, one thousand seven hundred and ninety-five, shall be and the same is hereby repealed.

Repealing clause.

SEC. 2. *Be it further enacted*, That it shall be the duty of every person, when applied to by a commissioner for a list of his taxable property, in the year one thousand seven hundred and ninety-five, to give in on oath a list of all his lands, whether he holds by entry, survey, patent, or deed of conveyance, specifying in such list the number

Persons to give in land on oath

1794.

On failure
thereof lands
subject to for-
feiture.

Proviso.

Non-residents,
how and when
to enter their
lands.

Penalty for fail-
ure.

When and how
the sheriff is to
distrain for land
tax.

Mode of selling
land for taxes.

Sheriff's duty.

of acres in each tract, and the county and water course in which it is situate, also what tax (if any) has been paid for each tract of land, and the year for which such tax was paid, and every person failing or refusing to give in a list of his, her, or their lands, shall forfeit to the state all title, claim, or interest that he, she, or they may have in or to any tract or parcel of land not given in as aforesaid, and the lands so forfeited, shall be disposed of in such manner as shall be directed by law. *Provided nevertheless*, That nothing herein contained be construed to extend to the lands of infants, *feme covert*s, or persons *non compos mentis*.

SEC. 3. *And be it further enacted*, That non-residents and such persons as were not applied to by a commissioner, shall enter their lands with some commissioner of the tax in the state, in the same manner as above directed, on or before the last day of November, one thousand seven hundred and ninety-five, or on failure thereof, all title, claim, or interest of such non-resident or other person in or to any such tract or parcel of land shall be forfeited to the state, and disposed of as aforesaid. And where a commissioner shall receive any entries of lands from non-residents, or other persons, after he shall have made four general lists of taxable property and delivered them to the respective officers, and before the said last day of November, one thousand seven hundred and ninety-five, such commissioners shall forthwith make out four lists of such entries and have them certified by the clerk of his county according to law, and deliver one to the sheriff, and another to the auditor, who shall annex them to the general list before delivered by the said commissioner.

SEC. 4. That it shall be lawful for the sheriff to distraint for the land tax due in the manner directed by the act entitled "An act establishing a permanent revenue," and where no such property can be found, to sell so much of each tract of land charged with the tax as will be sufficient to pay the same, if the said land shall lie in his county; and the sheriff shall in such case advertise the sale, for one month, at the door of the court-house of his county, and for three weeks successively in the *Kentucky Gazette*; after such sale it shall be the duty of the sheriff to deliver to the purchaser a certificate of the quantity of land sold, describing therein the tract that was

charged with the tax, and the end or side from which the quantity sold is taken; and the surveyor of the county upon the receipt of such certificate, shall by him or deputy, proceed to survey the quantity sold as aforesaid agreeable to the certificate of the sheriff, and shall charge the purchaser with the expence of the same. The surveyor or his deputy, as the case may be, shall give reasonable notice to the former owners, if to be found in the county, or to his agent, if any he has therein, of the day on which survey is to be made, and upon the platt and certificate of the survey made as aforesaid being produced to the sheriff, it shall be his duty to convey the same to the purchaser, which conveyance shall vest in the purchaser, all the right, title, and interest of the proprietor for whose tax the land shall be sold. If the land entered on a list delivered to a sheriff shall not lie within his county, and payment shall not be made to him of the tax due thereon, he shall on or before the first day of May in every year, certify to the auditor a copy of so much of the list delivered to him as relates to lands entered with a commissioner of his county lying in another county, and it shall be the duty of the auditor to transmit a copy of the same to the sheriff of the county in which such land lie on or before the first day of June, whose duty it shall be, if payment is not made, and no property to distrain can be found, to sell the same, in the manner he is herein before directed to sell lands entered and lying within his own county.

Sec. 5. *Be it further enacted,* That if any such purchaser is afterwards legally evicted from the lands so purchased by a prior or better claim, he shall have a right to recover by action on the case from the persons whose lands were sold for the payment of the tax, the amount of the tax so paid to the sheriff for such person, for the lands so purchased: and where he is evicted out of part of the land only, he shall have a right to recover a proportionable part of the tax paid to the sheriff. Where the sheriff shall expose any part of land for sale for the payment of the tax with which it is charged, and it will not sell for the same, it shall be the duty of the county court upon proof being made of the same, to certify it to the auditor, who shall give the sheriff credit for the tax with which such tract of land is charged, for so much thereof as is in arrears; and where any tract or part

1794.

Surveyor's duty.

Sheriff's duty where lands lie out of his county.

Purchaser's remedy when legally evicted. Regulations where lands will not sell.

1794.

Sheriffs &c.
not to purchase.

thereof is not sold upon being exposed as aforesaid, and the tax for the same is not paid, it shall be the duty of the sheriff to expose the same annually, until the tax is paid or the land is sold; and no sheriff or his deputy shall directly or indirectly, purchase any land that shall be exposed to sale for the payment of taxes, and any land purchased by a sheriff or his deputy, or any other for his or their use as aforesaid, shall be forfeited to the state.

Regulations as
to town lots.

The owner of every lot in a town shall pay three shillings for every one hundred pounds of value to which such lot is appraised exclusive of the improvements thereon, and so in proportion for a less value. It shall be the duty of the commissioners to assess or appraise the value of every lot in every town within his district, from the best information he can get, not taking into consideration the improvements thereon, which shall not be appraised; if any such owner of any such lot, shall think himself aggrieved, he shall have a right to appeal to the next county court, who, upon due proof being made shall have power to alter such assessed or approved value, as to them shall seem just. Where any list or lists delivered to a sheriff as aforesaid, shall by accident or otherwise be lost or destroyed, such sheriff shall apply to the county court of his county for a copy of the same, and it shall be their duty to direct their clerk to make out and certify a true copy of any list or lists lost or destroyed as aforesaid, and deliver the same to the sheriff.

Insolvents &c.
how certified.

SEC. 7. *Be it further enacted,* That a list of all insolvents, and of such persons as have removed out of the county with their property, shall be returned by the sheriff on oath to the county court, which list so far as approved of and allowed by the court, shall be transmitted to the auditor, with an account of the tax due from any person who may have removed out of the county, together with the name of the county to which he may have removed; which account the auditor shall immediately transmit to the sheriff of the county to which such person may have removed, to be charged on his book and collected and accounted for according to law.

Auditor's duty
as to persons removing.

Arrears of taxes
how paid.

SEC. 8. *Provided always, and be it further enacted,* That all arrears of taxes due for land, shall be charged and collected according to the class in which each tract is placed, and where any person has paid the tax on any

III. YEAR OF THE COMMONWEALTH.

269

tract of land that he or she, or tenants claiming under him or her, did not actually reside on at the time such tax was paid or any part thereof, which will appear from the commissioners list, such person shall have credit for the surplus of the land tax (if any) according to the class in which his land is placed, charging him only with the amount of the tax due on his or her lands as classed. And provided further that no land shall be sold for the payment of taxes before the first day of May annually, at which time the sheriff of each county, shall receive from the auditor an account of all taxes that have been paid by non-residents for lands listed with any commissioner of his county, and of the lands for which such tax was paid to enable him with certainty to know what lands he shall be obliged to sell for the payment of taxes.

1794.

When lands are to be sold.

SEC. 9. *Provided, and be it further enacted,* That the several sums of money on law process, alienations, seals, or otherwise, paid to, and collected by the several clerks of the county courts, and courts of quarter sessions, shall be annually accounted for and paid as by law is directed; at some time in the month of November; and so much of any law as requires the said clerks to account for and pay the monies as aforesaid, in the months of June and December, shall be, and the same is hereby repealed.

When Clerks are to settle their accounts.

And that the commissioners books for entering land, may be uniform throughout the commonwealth,

SEC. 10. *Be it enacted,* That each commissioner shall keep for the purpose of entering lands by virtue of this act, a book in the following form, viz:

Form of Commissioners Book for entering Land.

Owners names.	County lying in.	Water course.	quantity of acres.	first rate.	second rate.	3d. rate.	Amount tax paid.	In what year.		
J. Jacobs.	Wood.	Elkhorn	1000	do.			10	1792	1793	1794
J. Johns.	Fayette	Jeffamie	500	do.			7	do		

SEC. 11. *And be it further enacted* That the taxes to be collected in the year seventeen hundred and ninety-
five be reduced one fourth part.

SEC. 12. *And be it further enacted,* That the different sheriffs in this state shall have till the first day of August annually, to settle their respective accounts with the treasurer, and so much of any act as obliges them to set-

When Sheriffs are to settle their accounts.

1794.
How lands are
to be assessed.

Commence-
ment.

tle on or before the first day of June, is hereby repealed; nothing in this act shall be construed so as to affect the taxes that are to be collected for the present year. All lands shall be assessed agreeably to its quality, without reference to the rich lands in Fayette; and so much of any former law as makes the rich lands in Fayette the standard of first rate land, shall be and is hereby repealed.

SEC. 13. This act shall commence and be in force from and after the passage thereof.

CHAPTER CLXXIV.

An ACT to amend an act entitled "an act concerning Executions and for the relief of Insolvent Debtors."

Approved December 26, 1794.
Vide the prelection to Chapter 61. This act is important, as it directs when executions issued from the county court shall be made returnable.

Part of former
Law repealed.

SECTION 1. *BE it enacted by the General Assembly,* That so much of every act or acts that makes it necessary that notice shall be given, by the obligee, of a replevy bond, to the obligor, shall be and the same is hereby repealed.

Proceedings on
replevy bonds.

SEC. 2. *And be it further enacted,* That from and after the passage of this act, that any obligee or obligees of a replevy bond, his, her, or their executors, administrators, or assigns, may at any time after the day of payment, mentioned in the condition of any such replevy bond, order, and the clerk of the court wherein judgment was given, is hereby required to issue an execution on such bond against the obligor, or obligors, his, her, or their executors or administrators, for the sum that may then appear due, with legal interest, and such costs as the party suing out such execution may be entitled to. This act shall not be construed to extend to bonds given for the delivery of property at the day of sale. Executions issued from the county court shall be made returnable to the first day of every subsequent court, provided there be not less than thirty, nor more than ninety days from the test thereof.

Not to extend
to bonds for de-
livery of prop-
erty.
Return day of
executions from
county courts.

Proceedings
where lands are
given to dis-
charge the bo-
dy.

SEC. 3. *And be it further enacted,* That where lands are tendered on a *capias ad satisfaciendum*, the sheriff shall proceed to sell but shall not discharge the body of the debtor, until the money, interest, and costs are made.

III. YEAR OF THE COMMONWEALTH.

271

SEC. 4. This act shall commence and be in force from and after the passage thereof.

1794

CHAPTER CLXXV.

An ACT concerning the Public Printer.

Approved December 20, 1794.

For the final settlement of the accounts of the Public Printer,

SECTION 1. *BE it enacted by the general assembly,* That the governor be authorised and required to appoint one fit and proper person, the said printer one, and the two so appointed shall appoint one; the three persons so appointed shall proceed to examine and settle the accounts of the said printer against this commonwealth, for the services he has already performed, and they shall give a certificate to the said printer of the account which they shall judge him in equity and justice entitled to: and they shall moreover contract with the said public printer for the printing the journals, resolutions, and laws of the present session, and grant a certificate in like manner; which certificates being produced to the auditor he shall issue his warrant on the treasurer for the payment thereof: *Provided however,* That the persons appointed as aforesaid, shall neither of them be members of the present general assembly.

Mode of settling Printer's account for past services.

Persons to contract for printing laws &c.

Proviso.

SEC. 2. *And be it further enacted,* That a public printer to this commonwealth shall hereafter be annually appointed by joint ballot of both houses of the general assembly.

Public Printer how appointed hereafter.

SEC. 3. *And be it further enacted,* That in case the public printer refuses to print the journals, laws, and resolutions of the present session, the governor shall have power to direct some person to employ a printer for the purpose of printing the said journals, laws and resolutions.

Provision in case the printer refuses to print laws, &c.

CHAPTER CLXXVI.

An act to explain an act entitled "an act to disable officers under the continental government from holding offices under the authority of this commonwealth."

Approved, December 20, 1794.

Vide the prælection to chap. 40, ante.

NOVEMBER SESSION,

1794.

SECTION 1. *Be it enacted by the general assembly,* That the act entitled "an act to disable officers under the continental government from holding offices under the authority of this commonwealth," shall not be extended to affect persons called on to act as officers on voluntary expeditions, under the authority of the United States.

SEC. 2. *Provided however,* That nothing herein contained shall be so construed as to extend to persons receiving commissions in the standing army of the United States, or those who may be called into service for more than four months.

CHAPTER CLXXVII.

An ACT making compensation to John Fowler.

Approved December 12, 1794.

He had been appointed by a resolution of the general assembly, agent to bring forward the original title papers of lands in Kentucky from the register's office of Virginia—many of the papers were withheld, but he brought what he could get—for which service and his expences while attending to it, this act allowed him 200 dollars.

CHAPTER CLXXVIII.

An ACT concerning the will of James Elliott, deceased.

Approved December 17, 1794.

He had made his will and died in the north western territory—in his will he had ordered some lands lying in Jefferson county to be disposed of—his will was recorded in that county, the lands afterwards were included in Shelby county. This act authorized the executors to qualify in, or on their refusal administration to be granted by the county court of Jefferson.

CHAPTER CLXXIX.

An ACT to establish a town on the lands of Walter Beall in the county of Greene.

Approved December 4, 1794.

Preamble.

WHEREAS, it is represented to the present general assembly, that one hundred acres of land, the property of Walter Beall, in the county of Greene, has been laid off into convenient lots and streets, by the said Beall, for the purpose of a town, and distinguished by the name of Greensburg; and it is judged expedient to vest the said land in trustees, and establish the town,

III. YEAR OF THE COMMONWEALTH.

273

SEC. 1. *Be it therefore enacted*, That the said one hundred acres of land shall be vested in William Casey, William Buckner, Elias Barbee, John Hall, Samuel Burks, Robert Allen, John Allen, John Emmerson, Richard Thurman, and James Allen, gentlemen, trustees, for the purpose of a town, and known by the name of *Greensburg*; and that the said trustees or a majority of them shall proceed to sell the lots that remain unsold, for the best price that can be got, either for ready money or credit, as the proprietor shall direct, having previously advertised the time and place at the door of the court house of said county, for at least two months. The purchasers of lots in said town, shall within three years from the time of purchase, build a dwelling house at least sixteen feet square, with a brick or stone chimney, and shingle roof; and on failure thereof the lot shall be forfeited, and shall be sold by the said trustees for the best price that can be had, and the money applied to the use and benefit of the town. The said trustees or a majority of them, shall have power to make rules for the regular building on lots in said town, and to determine all disputes respecting the limits of the same. They shall have power to supply vacancies in case of death, resignation or inability of one or more of the said trustees to act. And the owners of lots in said town shall be entitled to all the rights, privileges and immunities, which the inhabitants of other towns in this state possess and enjoy.

SEC. 2. *Be it further enacted*, That all settlers or purchasers who by contracts with the said Beall or other persons duly authorised, are entitled to lots, shall not be affected by this act, but their claims to lots, whether by settlement, under contracts with the proprietor, or by purchase, shall remain as valid and binding on the parties, as if this act never had been made; and the further time of twelve months shall be given to those who have already purchased lots, and settlers on lots under the original contract with the proprietor to erect the necessary buildings on their lots to save them from forfeiture.

SEC. 3. *Be it further enacted*, That the said trustees shall have power to convey lots in fee simple to settlers and purchasers, who may be entitled to the same, and shall pay the money arising from the sale of lots made by

1794.

Lands vested in trustees.

Town established. Name.

Power & duty of trustees.

Term allowed to build. Dimensions of buildings.

Further power of trustees.

Contracts of first settlers valid.

Further time to improve.

Further power of trustees.

NOVEMBER SESSION,

1794. them, or assign the bonds taken by them for the purchase money of lots to the proprietor or his order.

Owner of better title to recover purchase money.

SEC. 4. *And be it further enacted*, That nothing herein contained shall be construed so as to prevent any person who may have a more legal or equitable right than Walter Beall, to the land aforesaid, vested in the said trustees, from recovering the money arising from the sales of said lots, from the persons who may have received the same.

Commencement.

SEC. 5. This act shall commence and be in force from the passage thereof.

CHAPTER CLXXX.

An ACT authorising the Court of Logan to appoint Commissioners.

Approved December 12, 1794.

Connected with the subject of revenue.

SECTION 1. *BE it enacted by the general assembly*, That the county court of Logan shall at some court to be held for said county, prior to the first day of March next, and within every subsequent term of two years, have power, and they are hereby authorised to appoint two commissioners, to take in the taxable property within the said county, pursuant to an act entitled "an act to establish a permanent revenue," any thing in the said recited act to the contrary notwithstanding.

SEC. 2. This act to be in force from the passage thereof.

CHAPTER CLXXXI.

An ACT for the relief of Ensign Vaughan and others.

Approved December 4, 1794.

Vaughan with nineteen militia men had been ordered as a guard to escort Armistead Sharp to several courts as a witness on behalf of the commonwealth. The nature of the case required that the guard should serve on horse back, and no provision had been made by law paying for horse service or the additional expence of it—Wherefore this act allowed them three shillings per day each.

CHAPTER CLXXXII.

An ACT concerning the Judges of the Court of Oyer and Terminer.

Approved, December 20, 1794.

This act gave them 200 dollars each in addition to their annual salary.

IV. YEAR OF THE COMMONWEALTH.

275

CHAPTER CLXXXIII.

1795

An ACT to alter the times of holding Courts in the County of Clarke, and to enable the Justices of Jefferson County to hold an additional session.

Approved December 20, 1794.

Had its effect.

CHAPTER CLXXXIV.

An ACT appropriating Money.

Approved December 20, 1794.

The first section is the ordinary appropriation bill.

SEC. 2. *And be it further enacted*, That the auditor shall issue warrants on the treasurer for the payment of such detachments of militia that may have been ordered into service by the governor for the defence of the frontiers under the authority of this state, on the pay-rolls, being approved and signed by the governor, and such warrants shall be admitted in the payment of taxes, to be collected the succeeding year.

November Session, 1795.

CHAPTER CLXXXV.

An ACT opening a Waggon Road to Cumberland Gap.

WHEREAS it is essential to the true interest of this commonwealth that a good waggon road should be made to Virginia:

Preamble.

SECTION 1. *Be it enacted by the general assembly*, That three men of integrity and responsibility be appointed by the governor, as commissioners, and vested with full powers to open a waggon road, to commence in the neighborhood of the Crab Orchard, and to terminate on the top of Cumberland mountain, in the gap through which the present road passes; the said commissioners shall have absolute discretion as to the direction of the same, with power to let out the clearing thereof in parts

Commissioners to be appointed.

Their powers.

Where road to begin and terminate.

1795. Direction of the road.	or in the whole, to such persons as they may think fit, or to employ a sufficient number of hands, guides, surveyors, chain-men, markers, &c. for the execution thereof, in the cheapest and most effectual manner. The said commissioners shall cause the said road to be carried the nearest and best way it can, for the safe and easy passage of waggons and carriages, making the same in every part perfectly commodious and passable for waggons carrying one ton weight, and to be in every part, except where digging or bridging is necessary, at least thirty feet wide : should the said commissioners judge it most expedient to let the whole or any parts or portion of the said road, they shall make such their intentions known by advertisement, for six weeks successively in the Kentucky Gazette, and shall then let the same to the lowest bidder or bidders, in such lots as may be agreed on, observing to take from the said undertakers, bond with sufficient security for the faithful execution thereof agreeably to contract : the said bond to be made payable to the said commissioners and conditioned to be void upon due compliance therewith : and in case of a violation of contract of any person undertaking as aforesaid, the said bond or bonds shall be prosecuted in any court of record in this commonwealth, the proceeds whereof shall go into the public treasury : in case the said commissioners shall judge it expedient to let the clearing of the said road or any part thereof, they shall be considered as the sole judges on the part of the commonwealth, whether the persons undertaking have complied with their contract. And if they shall judge that they have so complied, they shall then, and not before, deliver to such person or persons a certificate under their hands, specifying the contract made with such person, the completion of the same, and certifying that said person by virtue thereof is entitled to so much money as may then remain due ; upon the producing of which certificate to the auditor, he shall grant a warrant on the treasurer for the amount thereof, which he shall pay out of any public monies then in hand. And whereas it is uncertain what mode the commissioners may adopt as the most effectual for opening the said road, and the general assembly being desirous that no impediment may stand in the way of the most speedy and beneficial execution of the same, and willing that the largest sum that the present state of the
Clearing, how let,	
Undertakers to give bond.	
Proceedings thereon.	
How the un- dertakers are to be paid.	
Money appro- priated.	

public funds will admit of, should be consigned to that purpose :

1795

SEC. 2. *Be it further enacted*, That the sum of two thousand pounds is hereby appropriated to the above purpose, and that the said commissioners shall have power from time to time to draw on the treasurer for the same. The said commissioners shall be appointed by the governor as soon as possible, after giving bond and security to the governor for the time being, and his successors, for the faithful execution of their trusts ; shall immediately enter upon the duties of their office ; and in case of death, disability, or refusal to act, the governor shall from time to time fill up the vacancy. And whereas it will be incumbent on the said commissioners to devote much time, labour, and attention, to the important business committed to them, a total sacrifice of which cannot be expected from any individual citizens :

Commissioners
by whom ap-
pointed, and to
give bond.

Vacancies how
filled.

SEC. 3. *Be it enacted*, That the said commissioners for every day which they shall be employed in the discharge of the duties committed to them by this act, shall be allowed respectively the sum of ten shillings per day, which several sums, on their affidavit of the amount of services performed by them respectively, shall be paid by the treasurer, on a warrant from the auditor.

Their compen-
sation.

How certified
and paid.

SEC. 4. *And be it further enacted*, That the road when compleated shall be considered as established by act of assembly, and shall not be changed, altered or obstructed, by private individuals, or the court of any county, without the consent of the legislature for that purpose first obtained.

Road unaltera-
ble but by law.

SEC. 5. *And be it further enacted*, That the aforesaid commissioners shall have full power, and they are hereby directed to open a waggon road from the settlement of Madison court house, to intersect the aforesaid road at the most convenient place near the Hazlepatch, under the same regulations as aforesaid. The said commissioners shall keep a fair statement of all contracts by them made, in a book, to be by them kept for that purpose, and shall lay the same, together with an account of all bonds taken to compel a compliance therewith, before the next legislature.

Further power
of the commis-
sioners.

Further duties.

SEC. 4. This act shall commence and be in force from and after the passage thereof.

Commence-
ment.

1795.

CHAPTER CLXXXVI.

An ACT for processioning Lands.

Vide an act of 1796, to reduce into one the several acts to ascertain the boundaries of, and for processioning lands in which this act is incorporated, (Chap. 275)—See the prelection to that Chapter.

Preamble.

WHEREAS, it is represented to this present general assembly, that the land marks in this state, some of which are destroyed by fire, and otherwise, particularly the corner trees, so that in a few years the bounds and corners cannot be ascertained; for remedy whereof,

Counties to be divided into districts.

Commissioners to be appointed. Their duty.

Be it enacted by the general assembly, That the county courts throughout this commonwealth, shall as soon as may be, proceed to lay off their counties into districts, as to them shall seem most convenient, for the purpose of processioning or going round every person's land, and appointing two or more fit persons in each district, commissioners for the said purpose, who, or any two of them, shall on application of any person producing his title papers, go round his land, and re-mark the same, taking care that the said re-marks are on the same old lines, and where they find the corner trees, stones, or posts, or any of them, removed, defaced or rotted down, so that it is probable it will in some future period put it out of the power of the owner or owners to establish the same. The said commissioners shall proceed by comparing the title papers, and finding the same so removed, defaced, or rotted down, mark new corner trees, place stones or posts, or where any one is out of the way, add one or more, as to them shall seem right, and give a certificate thereof, certifying whose lands, and what alterations, or corner trees, stones, or posts, have been added, which certificate shall be returned to the clerk of the said county where the land lies, and it being approved of by the court shall be entered by the clerk, in a book to be by him provided and kept for that purpose. Each commissioner for every day he is in service, shall be paid the sum of four shillings, and the clerk, for every record of a certificate, shall receive the sum of one shilling and six pence, which shall be paid by the person applying for the same.

Their allowance.

Commencement.

This act shall commence and be in force from and after the passage thereof.

IV. YEAR OF THE COMMONWEALTH.

279

CHAPTER CLXXXVII.

1795.

An ACT giving further time to enter Lands with the Commissioners.

Connected with the revenue laws. *Vide chap. 10.*

Approved, November 28, 1795.

WHEREAS, the time of entering lands with the commissioners for taking lists of taxable property, will expire on the last day of this present month, and a number of the good citizens of this state, as well as non-residents may be injured thereby ; for remedy whereof,

Preamble.

BE it enacted by the general assembly, That the further time of ten months from the end of the present session of the general assembly, shall be allowed to all persons, as well non-residents as citizens of this state, to enter their lands with commissioners for taking lists of taxable property.

Ten months allowed to enter lands with commissioners.

This act shall commence and be in force from the passage thereof.

Commencement.

CHAPTER CLXXXVIII.

An ACT to amend and reduce into one act the several acts authorising the County Courts to appoint Commissioners for the conveyance of Lands.

Approved December 14, 1795.

Vide the prelection to chap. 50.

WHEREAS many persons die intestate, having previous to their death made sales of land without executing deeds of conveyance therefor, or transferring the same or having made a will, shall not in such will have authorised his executors, or some other person, to make such deeds or assignments in performance of his contracts, for which if suits in law or equity should be instituted by the person possessing from such contract an equitable claim in such lands, it would tend greatly to the injury of the estate of such decedent ; for remedy whereof,

Preamble.

SECTION 1. *BE it enacted by the general assembly,* That where any person has died, or shall hereafter die intestate, leaving his heirs, or any of them infants, or having made a will, shall not in such will have authorized his executors or some fit person to make deeds of conveyance, or to transfer or make assignments in perform-

How lands sold in the life time of decedant may be conveyed.

1795.
 Platts & certificates assigned.
 Application to be made to the county courts.
 Proviso.
 Repealing clause.
 Commencement.

ance of his contracts, and having previous to his death executed bonds or any instrument of writing binding him to convey any tract of land, or to assign over any platts or certificates by which the title to the same may be transferred; that in such case it shall be lawful for the administrators or executors of such person, as the case may be, to apply to the county court where such land lies, to appoint three fit persons guardians of such infant or infants, who shall have full power and authority to convey any tract or parcel of land, or to assign any platts and certificates of land to the persons entitled to the same, which the decedent bound himself and his heirs in any instrument of writing to convey or assign, agreeably to the tenor of such instrument; and such conveyance so made shall be as valid and binding upon the heirs as if made by the ancestor in his life time. *Provided however*, that nothing in this act shall be so construed as to prevent the infant representatives of such decedent, from instituting suits to recover such land or a compensation in damages from the person or persons to whom it shall have been conveyed, if any fraud shall have been practised in obtaining the same.

SEC. 2. *Be it further enacted*, That so much of every acts or acts as comes within the purview of this act, shall be and the same is hereby repealed.

SEC. 3. This act shall commence and be in force from and after the passage thereof.

CHAPTER CLXXXIX.

An ACT to establish the Town of Newport.

Approved December 14, 1795.

Preamble.
 Town established.

WHEREAS it is represented to the present general assembly, that one hundred and eighty acres of land, the property of James Taylor, in the county of Campbell, has been laid off into convenient lots and streets by the said James Taylor for the purpose of a town, and distinguished by the name of Newport, and it is judged expedient to vest the said land in trustees, and establish the town:

SECTION 1. *Be it therefore enacted by the general assembly*, That the land comprehending the said town, agreeably to a platt made by John Roberts, deputy surveyor of said county, on a re-survey of said town, the

20th of August, 1795, and lodged in the office of said county, to be recorded in the court of said county, be and the same is hereby vested in Thomas Kennedy, Washington Berry, Henry Brasher, Thomas Lindsey, Nathan Kelly, James M'Clure, and Daniel Duggan, who are hereby appointed trustees for the same, except such parts as are hereafter excepted. And the said trustees, or a majority of them, are authorised to make such rules for the regular building on the lots as to them shall appear most conducive to the benefit and convenience of the inhabitants, and have full power to settle and determine all disputes concerning the bounds or lines of all lots in the said town; they shall have power to form rules for improving, clearing, and keeping the streets in good order, by applying to the county court who shall appoint an overseer, with power to call on the inhabitants for that purpose, and any persons so called on, neglecting or refusing to attend, shall forfeit the sum of one dollar, to be recovered before any justice of the peace within the county.

1795.

Vested in trustees.

Their powers.

SEC. 2. *And be it further enacted*, Whosoever shall erect any nuisance within the limits of the said town, or shall cause any obstruction in the streets or highways of the same and not removing the same upon notice from any one or more of the trustees of said town, shall forfeit and pay the sum of three dollars, for every twenty-four hours such nuisance or obstruction shall remain after such notice.

Nuisances, &c., prevented.

SEC. 3. In case of the death, resignation, removal out of the county, or other inability of any one or more of the said trustees to act, such vacancy shall be filled up by the appointment of a majority of the remaining trustees, with suitable persons for that purpose, who shall have the same power as those herein before appointed; and the said trustees shall keep a fair record of their proceedings, and may appoint a clerk amenable to said trustees, who may make him an allowance equivalent to his services.

Vacancies how filled.

Trustees to keep record. To appoint a clerk.

SEC. 4. And the said trustees shall have power to levy and collect from the inhabitants, any sum not exceeding twenty pounds annually, for the purpose of defraying the necessary expence attending the discharge of their duty, in case such sum does not arise from fines and forfeitures.

May levy money, for what.

SEC. 5. A majority of the said trustees shall have Furtherp

1795.

power to convey the lots not yet deeded to the respective proprietors, in fee on producing a receipt from James Taylor, or his agent, for the original purchase money, and the deeds heretofore made by the agent or agents of the said James Taylor to the purchasers of lots in said town, shall be confirmed and remain as valid as if the said town had been originally vested in trustees.

How the surplus &c. of the lots may be disposed of,

SEC. 6. If at any time a surplus or deficiency should appear in any of the general squares within said town, it shall be in the power of the said trustees to apportion in the most equitable manner amongst the proprietors of lots within the square such surplus or deficiency.

Common reserved.

SEC. 7. *And be it further enacted*, That such part of said town as lies between the lots and the river Ohio and Licking, as will appear by a reference to the said plat, shall for ever remain for the use and benefit of the said town, for a common: reserving to the said James Taylor and his heirs and assigns, every advantage and privilege which he has not disposed of, or which he would by law be entitled to.

Rights legal & equitable of others saved.

SEC. 8. *Be it further enacted*, That nothing herein contained shall be so construed as to prevent any person who may have a more legal or equitable right than James Taylor, to the lands aforesaid, from recovering the money arising from the sale of the said lands from the persons who may have received the same.

Commencement.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXC.

An ACT to amend and reduce into one act the several acts concerning Bastardy.

Approved December 14, 1795.

In the case of *Tanner vs. Aller*, spring term 1806, the court of appeals decided that when a woman was delivered of a bastard child out of this commonwealth, no court in it had jurisdiction of the case.

Regulations where a woman is delivered of a bastard.

Woman to make oath before a justice,

SECTION 1. *Be it enacted by the general assembly*, That if any single woman, not being a slave, hath been, or shall be hereafter delivered of any bastard child, it shall be lawful for such single woman to make oath before some justice of the peace for the county where the person charged with being the father of such bastard

child resides, that she was on such certain day delivered of a bastard child, at the place and county where said delivery shall have happened, and also name in said oath the sex of such bastard child; and the person who is the father thereof; whereupon it shall be lawful for such justice to issue his warrant directed to the constable, sheriff or coroner as the nature of the case may require, commanding him to bring before him or some other justice of the peace for said county, the person so charged with being the father of such bastard child; which warrant the officer to whom it is directed, shall execute immediately. And when the person so charged with being the father of any bastard child, shall be brought before any justice of the peace, it shall be lawful for such justice to bind him in a recognizance with one or more sufficient securities, to appear at the next court held for said county; which recognizance shall bind the party so charged in the sum of twenty pounds, and the security or securities in the sum of ten pounds, shall be given to the governor and his successors, and shall be void on the party appearing in court according to the condition thereof: or if the person so charged with being the father of any bastard child, shall refuse or neglect to give security as aforesaid, such justice shall forthwith commit him to the jail of the county, there to remain until he shall enter into recognizance as aforesaid, or shall be otherwise discharged by due course of law. And on the person so charged with being the father of any bastard child appearing in court, such court shall proceed to hear and determine the charge against such person. And if from the circumstances, the court adjudge the person so charged, with being the father of such bastard child, they shall and may, at their discretion, *make such order for the keeping and maintaining of such child, as they may think proper, by charging the father of the child with such sum of money as they may think necessary for its annual support, and for the length of time they may judge proper.* And the father of such bastard child shall thereupon enter into bond and sufficient security, to be approved of by the court, for paying the money in such proportions as the court may order, or in case of neglect or refusal, commit such person to the jail of the county, there to be kept until he shall give bond and security, or discharge himself by rendering a schedule of his property, and taking the oath of an insol-

1795.

And he to issue his warrant and to whom direct it.

Duty of the justice.

Person charged with being the father to enter into a recognizance and for what.

How to be dealt with if he refuses.

Proceedings in court.

The powers of the court.

Reputed father to enter into bond and for what.

1795.
 Proceedings
 thereupon,

vent debtor, which bond aforesaid shall be given to the governor and his successors; and on failure of the money being paid according to the condition of such bond, the court on motion (the party or his security having ten days notice) shall give judgment for the proportions that may appear due and unpaid in such bond. *Provided*, that if any bastard child die after such bond or recognizance entered into as aforesaid, the father of such child shall be discharged from such bond or recognizance after paying what may appear to be justly due thereon to the death of such child.

Proceedings a-
 gainst sheriffs.

SEC. 2. *And be it further enacted*, That when the sheriff of any county within this commonwealth shall be charged with being the father of any bastard child, the warrant for apprehending him shall be directed to, and executed by the coroner of such county, and the same proceedings shall be had thereon as before directed by this act as in other cases. And when the coroner or constable of any county shall be charged with being the father of any bastard child, the warrant shall be directed to, and executed by the sheriff, and the same proceedings had thereon as before directed. And in all other cases the warrant for apprehending a person charged with being the father of any bastard child, shall be directed to the constable, and by him executed.

Coroners and
 constables.

Penalty on fail-
 ing to execute
 warrants.

SEC. 3. If any sheriff, coroner, or constable shall refuse or neglect to execute any warrant to him directed, in any case specified in this act, he shall forfeit and pay ten pounds, by action of debt in any court of record, one half to the person suing for the same and the other half to the use of the commonwealth.

Commence-
 ment,

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXCI.

An ACT to amend the law concerning Strays.

Approved December 14, 1795.

Vide the prelection to chapter 19.

Persons prohi-
 bited from post-
 ing neat cattle,
 &c. within cer-
 tain periods.

SECTION 1. *BE it enacted by the general assembly*, That no person shall be allowed hereafter to take up and post any head of neat cattle, sheep, hog or goat, between the first day of April and the first day of November fol-

IV. YEAR OF THE COMMONWEALTH.

235

lowing, unless the same may be found within the lawful fence or inclosure of the taker up, having broken in the same. 1795.

SEC. 2. *And be it further enacted,* That so much of the law as allows a reward of three dollars and reasonable charges to the taker up of any stray horse, mare or colt, found running at large without the settlement of this state, shall be, and the same is hereby repealed; and that the taker up be only allowed such reward and fees as would be allowed had the same been taken up within the settlement of this state; and further, shall be obliged to cause such stray to be put into the pound of the county where the same may be posted, in like manner, and under the same regulations, as in the case of other strays.

Repealing clause.

Reward allowed.

Strays to be put into the pound.

SEC. 3. *Be it further enacted,* That it shall and may be lawful to advertise any stray in the Kentucky Herald, under the same rules and regulations as are provided by law for advertising the same in the Kentucky Gazette.

In what gazette strays may be advertised.

This act shall commence and be in force from and after the first day of March next.

Commencement.

CHAPTER CXCH.

An ACT establishing a Town on the lands of John Kenton, in the county of Mason.

WHEREAS, it is represented to this present general assembly, that it would be advantageous to many of the inhabitants of the county of Mason, if a town was established on the land of John Kenton, lying on the waters of main Licking, near the mouth of Cedar creek, where the said Kenton has laid off a town.

Preamble.

SEC. 1. *Be it therefore enacted by the general assembly,* That four hundred acres of land at the place aforesaid, be vested in David Broadrick, John Gettridge, William Baker, Joshua Baker, John Clarke, Edmund Collins, and William Kenton, gentlemen, trustees, for the purpose of a town, and be established as such by the name of Newtown; that the said trustees or a majority of them, shall have full power and authority to lay off the said land into convenient lots and streets, and dispose of the same at public auction, for the best price that can be got, either in money or country produce, as shall be most a-

Land vested in trustees.

Town established. Name.

Powers of the trustees.

1793.

greeable to the said Kenton, giving twelve months credit, and having previously advertised such sale for one month; the said trustees shall take bond with approved security for the payment of the purchase money to the said Kenton and deliver such bond to him.

Limitation for building & the kind to be erected.

Further powers of the trustees.

Right legal and equitable of others saved.

Commence-ment.

SEC. 2. *And be it further enacted*, That the purchaser of any lot in said town, shall within three years after such purchase, build thereon a brick, stone, or log house, sixteen feet square at least, with a brick or stone chimney, otherwise such lot shall be forfeited for the use of the town, and may be disposed of by said trustees, and the money applied in such manner as they may deem most advantageous for said town. The said trustees shall convey the lots sold to the purchasers in fee simple, subject to forfeiture in case of their non compliance with the terms and conditions aforesaid. They shall have power to make regulations for the government of said town, to settle all disputes about boundaries of lots, and shall be entitled to such immunities and privileges as towns in this commonwealth possess and enjoy. *Provided always*, nothing in this act shall be so construed as to affect the right of any person or persons to the said four hundred acres of land, or any part thereof; but any person or persons establishing his or their rights to the same, shall have full power to sue for and recover the purchase money, with interest from the said John Kenton.

This act shall commence and be in force from the passage thereof.

CHAPTER CXCIH.

An ACT to disqualify Sheriffs from holding a seat in either branch of the legislature for a certain time.

For the protection on chap. 16, ante.

WHEREAS, great injuries may arise to the citizens of this commonwealth, from an admission of improper persons into the legislature; for remedy whereof,

Be it enacted by the general assembly, That no principal nor deputy sheriff shall hereafter be eligible to either house of assembly, until he has made up his collections of the public tax and paid into the treasury all arrearages and shall have obtained a *quietus* for the same from the auditor of public accounts, and for one year thereafter.

IV. YEAR OF THE COMMONWEALTH.

287

This act shall commence and be in force from and after the first day of May next.

1795

CHAPTER CXCIV.

An ACT concerning certain Lands entered with the commissioners.

Connected with the subject of revenue—See prelection to Chapter 10.

WHEREAS, it has been represented to the present general assembly that in certain cases, the commissioners in receiving lists of the lands of persons out of this state, have made out the said lists in such a manner as to charge the same to the person giving in the same, and not to the non-residents who were the proprietors, and who ought alone to be chargeable with the taxes payable thereon: And whereas, from the manner of taking in such lists, the sheriffs are unable to give receipts to such non-residents, the lands standing charged to, and listed in the name of their agents, by whom the same were entered: In consequence of which the said agents are liable for the payment of the taxes, the same being entered in their names, and the land also liable to be sold, the same being the property of non-residents: For remedy whereof,

Be it enacted, That in every case where any person entering lands for another person, shall stand charged on the commissioners lists with the same, it may be lawful for him to make oath before any justice of the peace within this commonwealth that the land so entered was not his property, and that he had no right, title or interest therein at the time of making said entry; and upon a copy of said oath being lodged with the auditor, he is hereby directed to give the sheriff a credit for the taxes due on said land. *Provided nevertheless,* that nothing in this act contained shall prevent the said lands from forfeiture in case the same are not entered with the commissioners and the taxes paid thereon within the time prescribed by law.

Preamble

Person entering lands to make oath and for what.

How certified.

Proviso.

1795.

CHAPTER CXCV.

An ACT giving further time to make Surveys, and for returning Platts and Certificates to the register's office.

Approved, December 15, 1795.

Vide the prælection on chap. 38, ante.

WHEREAS the time for surveying of entries will expire on the first day of January next, also an act entitled "an act giving further time to the owners of platts and certificates to return the same," will expire at the end of the present session: Therefore,

Be it enacted by the general assembly, That there be allowed until the last day of November, one thousand seven hundred and ninety-seven, to the owners of entries, to survey the same; and the further time of two years from the end of the present session be given for returning of platts and certificates of survey to the register's office, any law to the contrary notwithstanding.

This act shall commence and be in force from the passage thereof.

CHAPTER CXCVI.

An ACT to prevent the increase of Vagrant and other idle and disorderly Persons within this state.

Approved, December 15, 1795.

Preamble.

WHEREAS, there has been of late a great encrease of idle and disorderly persons, having no visible estate or employments, who are able to work, and who frequently ramble from one county to another, neglecting to labor, or betaking themselves to any lawful calling to procure a livelihood, and who by their idle and disorderly lives, render themselves incapable of paying their levies when listed: For remedy whereof,

Who shall be deemed
grants.

SECTION 1. *BE it enacted by the General Assembly,* That every able bodied person who is found loitering or rambling about, not having wherewithall to maintain himself by some visible property, and who doth not betake himself to labor or some honest calling to procure a livelihood; and all persons who may be found begging, and who quit their habitations, and leave wives or children without suitable means of subsistence, whereby they suffer or become chargeable to the county; and all and

every keeper and keepers, exhibitor or exhibitors of either of the gaming tables called A. B. C. or E. O. tables, or of a Pharaoh bank, or any other table or bank of the same kind under any denomination whatever ; and all other idle and dissolute persons rambling about without any reasonable means of subsistence, shall be deemed and treated as vagrants.

1795

SEC. 2. *And be it further enacted*, That where any such person or persons as aforesaid, are found within any county in this commonwealth, it shall be lawful for any justice of the peace of said county, upon information, or from his own knowledge, and he is hereby required and directed to issue his warrant to the sheriff or constable, who shall execute the same to cause to come before him any such vagrant or disorderly persons ; and if upon due examination, it shall appear to the said justices that such person or persons are within the description of vagrants agreeably to this act, he shall commit such vagrant or vagrants to the gaol of the county until the next county court unless he or they enter into bond with sufficient security, to be adjudged of by the justice, for his or their appearance before the said court, and there to abide the determination of the same ; each vagrant to be bound in the penalty of twenty pounds, payable to the governor or his successor, and the security or securities in the same sum ; and if upon examination it appears to the court, that such person or persons are within the description of vagrants, and are minors, the said court shall direct the sheriff to bind him or them apprentice to some person of useful trade or occupation, until he or they arrive at the age of twenty-one years ; and if such apprentice or apprentices run away from his or their master, he or they shall be dealt with in like manner as other apprentices are who leave their masters before their apprenticeship expires. But if such vagrant or vagrants are above the age of twenty-one years, the court shall direct the sheriff to hire him or them to the highest bidder, for the best price that can be had, for any term not exceeding nine months. *Provided however*, that no person whatever, a minor or adult, shall be bound or hired out for any term whatsoever, unless it is first ascertained by the verdict of a jury, sworn and impaneled for that purpose, that such person is a vagrant within the description of this act ; and any person who shall hire such vagrant or vagrants may

Vagrants, how
dealt with.

Provide.

1795.

Proviso.

exercise the same power over him or them, as masters are allowed by law over indented servants. *Provided however*, if such vagrant or vagrants shall have a wife or family within the county, he or they may be set at liberty at the discretion of the court, upon his entering into bond with sufficient security to be adjudged of by the court, payable to the governor or his successors, the said vagrant or vagrants, to be bound in the penalty of thirty pounds each, and his security or securities in the like sum, to return to his or their wife or wives and families, and follow some lawful calling for their support and maintenance; but if the wife or wives and families of such vagrant or vagrants, live in any other county, the court shall direct the sheriff or constable to convey him or them to the county in which his or their wife or wives and families reside, and deliver such vagrant or vagrants to some justice of the peace for such county, to be dealt with as is hereby directed.

If not hired to
be whipped.

SEC. 3. *And be it further enacted*, That when no person or persons will hire a vagrant or vagrants who shall be deemed such by a jury impaneled and sworn for that purpose, or will not take him or them only by furnishing such necessary diet and clothing as he or they may stand in need of during his servitude, the court shall order such vagrant or vagrants to receive any number of lashes on his or their bare backs, not exceeding twenty-five, and the sheriff shall see the same executed accordingly.

Money for hire
how applied.

SEC. 4. *And be it further enacted*, That the money arising from the hire of any vagrant, shall be applied by the court towards paying the debts of such vagrant; but if he shall not be indebted or do not owe to the amount of his hire, the same or the balance thereof shall be paid to such vagrant, at the expiration of his term of service, unless such vagrant shall have a wife or children, in which case it shall be applied to their use.

If penalty for-
feited execu-
tion may issue
against forfeit-
ers.)

SEC. 5. *And be it further enacted*, That where any vagrant shall have entered into bond and security as aforesaid, such bond shall be lodged with the clerk of the court, and should the penalty be forfeited, the court shall direct an execution to issue thereupon against the goods and chattels, lands and tenements of his security or securities, for the amount of the sum for which they are bound, and the sheriff shall make distress and sell the

IV. YEAR OF THE COMMONWEALTH.

291

same in like manner as on other executions ; and the money arising therefrom shall be applied towards lessening the county levy ; and the sheriff shall account for and pay the same in like manner as the county levy is accounted for and paid ; and the clerk, sheriff and constable shall receive the same fees for performing the duties enjoined them by this act, as they are severally entitled to for services of a similar nature, to be paid by the court out of the county levy.

SEC. 6. *And be it further enacted,* That it shall not be lawful for any person to hire or employ in his or her house above two days, any person being a tithable, removing from another county, unless such person so removing, produce a certificate from a sheriff of the county in which he last resided, of his having paid levy in such county for the preceding year, or that he came into the state since the list of tithables were taken, or that he was a servant at the time such list was taken : any person so hiring or employing another, being a tithable without having such certificate, longer than the term aforesaid, shall forfeit and pay for every such offence, two dollars, to be recovered with costs, before any justice of the peace for the county wherein the offence shall be committed, to be applied towards lessening the county levy ; and any person being a tithable, removing as aforesaid, who shall offer himself for hire without such certificate, shall be liable to the same penalties and forfeitures, to be recovered in like manner as persons are subject to who do not list themselves as tithables.

SEC. 7. *And be it further enacted,* That all justices within this commonwealth are hereby required to see this act executed, and it shall be the duty of all sheriffs and constables within the several counties, to give information to some justice, of all vagrants that may be within their knowledge, in their respective counties, or such other disorderly or wandering persons who are lurking about without any visible means of maintenance, as they may suspect to come under such description ; and it shall be the duty of the grand jury impaneled for any county within this commonwealth, to make presentments of all such persons within the county, as they may suspect to be vagrants, agreeably to this act ; and upon any such presentment, the court shall direct some justice of the county to issue his warrant to bring such suspected per-

1794.

The money
how applied,

Fee to sheriff
& constable.

Penalty for em-
ploying titha-
ble more than
2 days, remo-
ving from ano-
ther county
without a cer-
tificate.

Justices to ex-
ecute this act.
Duty of sheriffs
&c.

Grand jury to
present vagrants
Proceedings
thereon.

- 1795
 Tables to be destroyed. sons before him, and if upon examination it appears to such justice that such person come within the description of vagrants, the same steps shall be taken with such vagrant as is heretofore directed. And it shall be the duty of any justice of the county wherein there may be found any table or tables commonly called A. B. C. or E. O. tables, or tables of the like kind or description, to issue his warrant to the sheriff or constable, to have such table or tables burnt or otherwise destroyed.
- Repealing clause. SEC. 8. All acts and parts of acts heretofore in force concerning vagrants, that come within the purview of this act, shall be, and the same are hereby repealed.
- Commencement. This act shall commence and be in force from the passage thereof.

—:~::~~::~~:—

CHAPTER CXCVII.

An ACT concerning certain Powers of the General Assembly, and the Privileges of the Members.

Approved December 17, 1795.

- Preamble. TO remove any doubts concerning the powers or authority of the general assembly, to compel the attendance of witnesses, or to send for persons, papers and records for their information, on any matter or subject under consideration.
- Power to send for persons, papers, &c. SECTION 1. *Be it enacted by the general assembly,* That the senate or house of representatives, or any standing committee or committees of the whole house, of either branch of the legislature, shall have power to send for persons, papers, and records, for their information on any subject or question which shall in any wise come or be before them; and that the members of the general assembly shall in no wise be disturbed or embarrassed in their deliberations on the great and important business of legislation.
- Members privilege. SEC. 2. *And be it further enacted,* That no person or persons shall under any pretence, directly or indirectly, by any ways or means whatever, arrest, assault, menace or otherwise disturb the person of a member, during his privilege, except on legal process for treason, felony, or breach of the peace. Any member guilty of a breach of privilege may be censured, or fined, or be expelled by consent of two-thirds of the members present. Either branch of the legislature shall have power to punish any
- Exceptions.
- Punish breach of privilege.

IV. YEAR OF THE COMMONWEALTH.

1795.

person or persons by fine or imprisonment, for a contempt or breach of privilege. The orders of either house shall be executed by their respective sergeant at arms, who shall govern himself according to the laws respecting sheriffs in similar cases. Contempts and breach of privilege shall be examined before a committee of the whole, of that branch of the legislature concerned, where every person shall be heard by himself or his counsel, and have compulsory process to procure witnesses; who shall report all matters of fact specially, with their opinion thereupon to the house, for further investigation and decision. Every person attending on a summons of either branch of the legislature or of any committee thereof, shall be entitled to the same privileges and allowances as are by law allowed to witnesses attending the court of appeals in similar cases which shall be certified by the clerk to the auditor, who shall issue his warrant on the treasury for the payment thereof. All fines imposed by virtue of this act shall be levied by the sheriff of the county where the party resides, upon an execution directed to him by the clerk of that house who shall assess the same, returnable within ninety days from the date thereof. The electors appointed to choose a governor and senate in conformity to the constitution, shall possess the same powers and privileges as the members of either branch of the legislature.

Their orders how executed,

Contempt, &c. may be examined.

Privilege and allowance of witnesses. How paid.

Executions to issue for fines.

Electors, their privileges.

To take oaths.

SEC. 3. *And be it further enacted*, That the clerk of each respective house, and the clerk of any committee appointed by their authority, shall have power to administer an oath to any witness called upon to give testimony.

This act shall commence from the passage thereof.

CHAPTER CXCVIII.

An ACT concerning the Revision of the Laws.

Approved December 17, 1795.

See chapter 102.

WHEREAS on the separation of this state from the state of Virginia, the convention declared all the laws then in force in that state and not of a local nature, in force also in this state; in consequence of which there are multiplied laws on the same subject; and it is neces-

Preamble.

1795.



sary and proper that a revision should be made of all the British statutes and acts of assembly now in force in this state, and a selection of such as ought to continue in force; and that the different acts on the same subject should be brought into one point of view :

Revisors and
their duty.

SECTION 1. *BE it enacted by the general assembly,* That two persons shall be appointed by joint ballot of both houses, whose duty it shall be, first, to prepare bills upon the subject of such British statutes, if any there be, which are suited to this commonwealth, and have not been enacted in the forms of acts of assembly. Secondly, to report what laws or parts of laws which are of a general concern shall remain in force at the close of the next session of the general assembly, after they shall have completed the work. Thirdly, to prepare bills upon the subject of such laws as from their multiplicity ought to be reduced into single acts. And, fourthly, to report what laws or parts of laws are either unfit to be continued in force or unnecessary to be published in any code of laws. And to prevent any delay which may happen in the proceedings of the revisors, if either should refuse or be disabled to proceed in the work, it shall be lawful for the governor to appoint another person in his room to fill up such vacancy; and so soon as the work shall be completed it shall be laid before the general assembly at their next meeting thereafter. *Provided,* that such bills so to be prepared and reported by the said revisors, shall be of no force until they shall have been passed in such manner and form as if the same had been originally introduced without the direction of this act.

Vacancies how
filled.

Revisors to re-
port.
Proviso.

Compensation.

SEC. 2. *And be it further enacted,* That the said revisors who may be appointed in conformity to this act, shall receive as a compensation for their services, fifteen hundred dollars, to be divided between them, according to the time that either may be employed in the business, who shall furnish their own clerks, paper, &c. at their own expence; and the auditor is hereby directed to issue his warrant on the treasurer for the amount aforesaid on a certificate being produced to him from the attorney general that the said revisors have completed the work agreeably to the requisitions of this act.

How paid.

Advance to re-
visors.

SEC. 3. *And be it further enacted,* That so soon as the revisors shall commence the business aforesaid, they may receive from the treasurer, on a warrant from the auditor,

IV. YEAR OF THE COMMONWEALTH.

295

the sum of five hundred dollars, to be accounted for and deducted out of the aforesaid sum of fifteen hundred dollars, to enable them to prosecute the aforesaid work.

1795.

This act shall commence and be in force from the passage thereof.

Commence-
ment.

CHAPTER CXCIX.

An ACT to establish a town on the lands of George Lewis, in the county of Mason.

Approved December 17, 1795.

SECTION 1. *BE it enacted by the General Assembly,* That seventy acres of land, the property of George Lewis, lying on the north of main Licking, beginning at Samuel Strode's corner, running with his line north fifty-one degrees east one hundred poles, crossing said creek, thence down the said creek its several meanders to the beginning, to include said creek, is by virtue of this act vested in Thomas Young, Jesse Hoard, Alexander K. Marshall, William Triplet, William Derrett, and Duval Payne, gentlemen, trustees, to be by them or a majority of them, laid out into lots and streets, and established a town by the name of Lewisbourgh. As soon as the seventy acres shall be laid off, the trustees or a majority of them shall proceed to sell the same for credit or ready money, as shall best suit the proprietor, taking bond and security of the purchasers; the time and place of such sale shall be previously advertised three weeks in the Kentucky Herald at least one month before the day of sale; the purchasers to hold such lots respectively, subject to such conditions and penalties as the said trustees shall think proper; and the said trustees or a majority of them, shall convey the said lots to the purchasers in fee, subject to the condition aforesaid, and pay the money or assign the specialties to the said George Lewis or his legal representatives: *Provided,* That the said George Lewis do previous to the receipt of such payment, enter into bond with one or more securities to the trustees, in the penalty of one thousand pounds, conditioned for the payment of the amount of such sales, with interest, to any person who shall hereafter establish a more legal or equitable claim to said land.

Lands vested in
trustees.

Town estab-
lished.
Name.
Lots laid off &
sold.

Condition of
holding lots.

Proviso.

SEC. 2. *And be it further enacted,* That the trustees

Trustees powers

1795.

Fill vacancies.

Commence-
ment.

or a majority of them, shall have power from time to time to settle and determine all disputes concerning the bounds of lots, and establish such rules and orders for the regular building of houses thereon, as to them shall seem most convenient; and in case of death, resignation or other legal disability of any of the trustees, it shall be lawful for the remaining trustees or a majority of them, to appoint others in their stead, and the Trustees so appointed, shall be vested with the same power and authority as those particularly named in this act.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CC.

An ACT establishing Franklin Academy.

Approved, December 15, 1795.

Trustees ap-
pointed.Their powers
and privileges.

First session.

SECTION 1. *BE it enacted by the general assembly,* That Thomas Waring, Thomas Sloo, John Coburn, Nathaniel Wilson, David Broderick, Edward Harris, George Lewis, William Ward, Robert Rankin, John Johnson, John Machir, William Wood, Basil Duke, William Goforth, William Roe, George Stockton, Alexander Marshall, Philip Buckner, Lewis Moore, Richard Durrett, Winslow Parker, Alexander D. Orr, Thomas Marshall and Philemon Thomas, shall be and they are hereby constituted a body politic and corporate, to be known by the name of the trustees of the Franklin academy, and by that name shall have perpetual succession, and a common seal, with a power to change the same at pleasure, and as such shall be authorised to exercise all powers and privileges that are enjoyed by trustees, visitors, and governors of any college or university within this state, not herein limited or otherwise directed.

SEC. 2. The said trustees shall hold their first stated session at the town of Washington in the county of Mason, the first Monday in February 1796, and they, or a majority of them, shall then or as soon as they think proper, fix upon a place for a permanent seat for said academy, and proceed to erect buildings thereon, and until suitable buildings and regulations are made at such place, they may commence and proceed in the institution at any other place they shall judge proper.

IV. YEAR OF THE COMMONWEALTH.

297

SEC. 3. The said trustees or their successors, by the name aforesaid, shall be capable in law to purchase, receive, and hold to them and their successors, for the use and benefit of said seminary, any lands, tenements and rents, goods and chattels, of what kind soever, which shall be given or devised to or purchased by them for the use of said seminary, and also to demand and receive from the collectors or other persons appointed by the original subscribers to this institution, such sums of money or property as may be collected from the said subscribers.

1795.

Further powers of trustees.

SEC. 4. No donation given or received for the use of this seminary shall be appropriated to the use of any other seminary.

Donations disposed of.

SEC. 5. The said trustees by the name aforesaid, may sue, or be sued, plead, or be impleaded in any court of law or equity in this state.

Further powers of trustees.

SEC. 6. The said trustees shall hold two stated sessions in each year at such time and place as they shall judge proper. And in case a sufficient number of members do not attend to constitute a board, those who do attend may adjourn to any day previous to the next stated meeting, and shall give ten days previous general notice thereof.

Hold 2 sessions a year.

SEC. 7. Seven members shall be sufficient to constitute a board for the transaction of all business respecting the said seminary excepting those cases particularly excepted.

Number to be a board.

SEC. 8. The assent of a majority of the whole number of trustees shall be necessary to perform the following business: to elect and fix the salary of the president; to fix on the permanent seat of the seminary; to alienate, sell or convey any lands, tenements, or rents belonging to the seminary; to appropriate any sum exceeding one half part of the amount of the funds.

When majority necessary.

SEC. 9. The trustees shall have power from time to time to establish such bye-laws, rules, and ordinances, not contrary to the constitution or laws of this commonwealth, as they shall deem necessary for the government of the said academy.

To establish bye laws.

SEC. 10. The trustees shall elect a president, treasurer and clerk to their own body, and so many professors, tutors, or masters, as may be necessary; and upon the death, resignation, or legal disability of any of the trustees

Elect president.

Fill vacancies.

1795.
Salaries. tees, president, or other officer of the said academy, the board of trustees shall supply the vacancy by ballot.
- Power & duty of president. SEC. 11. The president and other officers of the academy, shall have fixed annual salaries, be subject to the direction of the board of trustees, and continue in office during good behaviour.
- Seat of absent member filled by board. SEC. 12. The president of the board of trustees shall have power to call special meetings of the said trustees, and it shall be his duty upon the request of five of them to do the same; but upon any called meeting, ten days general notice shall be given by the president previous to the meeting.
- Provide, SEC. 13. If at any time a member of the board of trustees shall absent himself from three stated meetings successively, unless for good cause shewn and approved of by the said trustees, in such case his seat shall be considered vacant, and the board may proceed to fill his seat with a new member. It shall be the duty of the trustees to preserve inviolate the following fundamental articles:
- 1st. As the extension of useful knowledge is the only object contemplated by this institution, no preference shall be given in the choice of trustees, president, or teachers, on account of religious sentiments.
 - 2d. No law, regulation or ordinance shall be enforced by said trustees which is calculated to give a bias in religion to the minds of the rising youth; the purest principles of morality, unconnected with party or profession, ought to be the only impressions united with science, that a teacher should attempt to implant in the youthful mind.
- Provided however,* that the trustees of the said academy shall at all times be accountable for their conduct in the management of the business aforesaid, in such manner as the legislature shall by law direct.

CHAPTER CCL.

An ACT to establish District Courts in this commonwealth.

Approved December 19, 1795.

This act terminated the original jurisdiction of the court of appeals and abolished courts of oyer and terminer. It was probably the intention of the legislature, that the district courts should not be under the regulation of any acts of assembly respecting civil proceedings in any of the courts of Kentucky, and the only reference to these acts relates to sheriffs fees and trials in chancery—Hence the minute detail of the rules of practice given in the body of

IV. YEAR OF THE COMMONWEALTH.

299

the act, most of these were copied from the district court law of 1788, and the acts regulating proceedings in the courts of chancery in Virginia.

This act was amended by one passed in 1796, (Chapter 263.) It seems to have been the object of the legislature at that session, to introduce a new arrangement of the laws, by abstracting the acts organising the courts and specifying their jurisdiction, from the acts regulating proceedings in them. In conformity with this plan an act was passed for preventing vexatious suits and regulating civil proceedings, (Chap. 264) which contains most of the provisions on the common law side detailed in this act—That act declares that they shall be rules of decision and proceeding in all courts whatsoever within this commonwealth.

Another act was passed to reduce into one the several acts directing the rules and proceedings in courts of chancery, (Chap. 273) which comprised most of the chancery provisions contained in the present act.

Such parts of this act as relates to criminal prosecutions were disposed of in an act to reduce into one the several acts concerning the examination and trial of criminals, &c. (Chap. 262)—and such parts as relate to absent defendants, were introduced into an act directing the method of proceeding in courts of equity against absent debtors, &c. (Chap. 281)—as much as relates to witnesses, depended on this act until the January session 1798, (Vol. II. Chap. 56.)

There remain several provisions which depend solely on this law, having never been incorporated into any other act or repealed; such as the important provision in the 12th section, respecting notes filed in one office and put in issue in another—this was copied from the district court law of 1788: the return day of process mentioned in the eleventh section—the provisions respecting costs of continuance and taxing lawyers fees, in the twentysecond section—the powers given the court to assign prison rules, and the unqualified obligation on clerks to keep their offices at the court house.

At the January session 1798, an act was passed to reduce into one the several acts establishing district courts in this commonwealth, (Vol. II. Chap. 64) which was amended by an act passed at the November session following, (Vol. II. Chap. 165.)

The following point has been decided as to the jurisdiction of the district courts, viz. That uniting several demands, neither of which separately were cognizable in the district court, in order to give that court jurisdiction is illegal. *Lightfoot, vs. Peyton, April 1805.* Vide an act supplemental to this, (Chap. 208.)

WHEREAS the delays inseparable from the present constitution of the court of appeals, is equal to a denial of justice, and the expence occasioned thereby burdensome to suiters:

SECTION 1. *Be it therefore enacted by the general assembly,* That the original jurisdiction of the court of appeals, shall be, and the same is hereby taken away.

Jurisdiction of court of appeals taken away.

SEC. 2. *And be it further enacted by the general assembly,* That this commonwealth shall be divided into districts, and a supreme court holden in each in the manner and at the times and places hereinafter mentioned, that is to say: the counties of Jefferson, Nelson, Washington, Hardin, Green and Logan, shall compose one district, and a court shall be holden for the same at Bairdstown, on the second Tuesday in January and Sep-

Divided into districts and courts established.

1795.

1795. *Criminals tried in the district of Franklin only.* tember annually. The counties of Shelby, Franklin, and Woodford, shall compose another district, and a court shall be holden for the same in the state house in Frankfort, on the second Tuesdays in February, May, August, and November annually; and all criminals within this state, shall be tried by said courts until the further order of the legislature. The counties of Mason and Campbell, shall compose another district, and a court shall be holden for the same in Washington, on the first Monday in June and December annually. The counties of Bourbon and Harrison shall compose another district, and a court shall be holden for the same at Paris, on the first Tuesday in March and August annually. The counties of Fayette, Scott, Clarke and Madison, shall compose another district, and a court shall be holden for the same at Lexington, on the third Tuesday in May and December annually. And the counties of Lincoln and Mercer shall compose another district, and a court shall be holden for the same at Danville, on the second Tuesdays in March and October annually. Each court shall sit, if business requires it, fifteen days successively, Sundays exclusive, and no longer, and shall be a court of record.

Length of the terms. SEC. 3. *And be it further enacted by the general assembly,* That there shall be six judges appointed, whose duty it shall be to attend the said district courts, allotting among themselves yearly, the districts they shall respectively attend at the succeeding terms thereof, two to each court, who shall be judges of the court to which they shall be allotted: which allotment shall be certified under the hands and seals of the judges making the same, and entered upon the records of the district courts at their next term, to be holden respectively; and the said judges shall constitute a court for such district. In case of a temporary appointment of a judge by the executive after the yearly allotment of districts as aforesaid, such judge shall take the place of him in whose place he was appointed. *Provided nevertheless,* That if any one of the said judges shall not attend the court to which he shall be so allotted, by sickness, disability, or otherwise, that in such case the other judge shall constitute a court under the following restrictions, to wit; in all criminal cases where the charge shall be of such nature as in case of conviction, to subject the party to capital punishment or burning in the hand, two judges shall be necessary to proceed upon

Number of judges.

How to attend.

Previso.

Number to constitute court.

the trial of the issue, whether in law or fact. *Provided always*, that if only one judge shall attend the court, and any prisoner shall, notwithstanding, petition to be brought to trial, in such case, one judge shall constitute a court for such purpose. When two judges shall attend, all questions arising in criminal cases, and submitted to the court, in case the court shall be divided, shall be considered as adjudged in favor of the criminal : and if the court shall be divided on the final judgment or sentence, judgment shall be entered up in favor of the prisoner and he forthwith discharged. When two judges shall not attend, all criminal cases depending in aid court, and not tried upon the consent and petition of the prisoner, where the punishment shall be death or burning in the hand, shall stand continued over till the next court to be held for that district ; and if two judges do not attend at such next court, every prisoner whose cause has been so continued, shall be bailed as of right, which bail shall be according to the degree of the offence and ability of the prisoner : and if such prisoner shall attend on the first day of the next succeeding term, and render himself according to his recognizance, and there should not be a sufficient court to try such prisoner, on or before the third day of that court, such prisoner shall be forthwith discharged.

SEC. 4. Each judge before he enters upon the duties of his office, shall take the following oath or affirmation, viz ; I A. B. do solemnly swear or affirm (as the case may be) that I will administer justice without respect to persons and do equal to the poor as well as to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as a judge of the district courts in Kentucky, according to the best of my abilities and understanding, agreeably to the constitution and laws of the commonwealth, so help me God. Omitting in case of an affirmation, the words, " so help me God." Which oath or affirmation may be administered by a justice of the peace, a certificate of the taking of which shall be recorded in the district court.

SEC. 5. If a district judge shall not attend the first day of any district court, such court shall stand adjourned from day to day until a court shall be made, if that shall happen before four of the clock in the afternoon of the sixth day.

1795.

When one judge may sit.

When court divided judgment in favor of prisoner.

Regulations on trials.

Judges to take oath.
Form.

By whom administered.

Regulations in constituting court.

1795. **SEC. 6.** If a court shall not sit in any term, or shall not continue to sit the whole term, or before the end of the term shall not have heard and determined all matters ready for their decision, all such matters and things depending in court and undetermined, shall stand continued until the next succeeding term.

Causes to be continued.

SEC. 7. If from any cause the court shall not sit on any day in a term, after it shall have been opened, there shall be no discontinuance; but so soon as the cause is removed the court shall proceed to business until the end of the term, if the business depending before them be not sooner dispatched.

Jurisdiction.

SEC. 8. The jurisdiction of the said district courts respectively, shall be over all persons and in all causes, matters and things at common law, or in chancery, arising within their districts, whether brought before them by original process, *certiorari*, or *mandamus*, or by any other legal ways and means whatsoever, except of actions of assault and battery, or suits of slander, which shall be cognizable in the courts of quarter sessions only: *Provided always*, that no person shall sue out original process for the trial of any matter or thing of less value than fifty pounds, unless it be against the justices of an inferior court, on pain of being nonsuited.

Mode of trial.

SEC. 9. The district courts shall have power to try all issues and enquiries of damages by a jury in all causes before them, and to determine all questions concerning the legality of evidence and other matters of law which may arise, for which trial the court shall cause the sheriff attending them to impanel and return jurors to be sworn well and truly to try the issue joined, or to enquire of damages, as the case may be, according to evidence.

Further jurisdiction.

SEC. 10. The court shall hear and determine motions against sheriffs, or other officers, attornies at law, for securities against their principals or against each other; shall have full power to hear and determine all treasons, murders, felonies and other crimes and misdemeanors committed within their district, except breaches of the penal laws.

Process how issued, &c.

SEC. 11. All writs, summonses and other legal process, shall be issued by the clerk, bear test in his name, and be returnable to the third day of the next court to be holden for the district, except in cases of subpoenas for witnesses, which may be returnable immediately, if issued in term time, or on any day of the term.

SEC. 12. Where two or more persons are or shall be jointly, or jointly and severally bound in any bond or other writing, it shall be lawful to prosecute such persons jointly, in whatever district either of them may reside, and process shall issue and be served accordingly. And where the bond or other writing on which such suit shall be founded, shall be filed in the court of one district, and over thereof shall be demanded by the defendant or defendants to a suit in another district, it shall be sufficient for the plaintiff in the last mentioned suit to file a copy of the bond or writing attested by the clerk of the court wherein the same is filed; and the defendant or defendants shall be obliged to plead thereto in like manner as if the original bond or writing was filed; and such copy shall be admitted as evidence on the trial: if however, the defendant or defendants shall in [such*] case plead that the original bond or writing is not his or their deed, the clerk of the court having such original paper in his custody, shall, on being summoned as a witness, attend with the same at the trial of the issue for the inspection of the jury.

1795.

Proceedings on
certain bonds.

SEC. 13. In all actions to recover the penalty for the breach of any penal law not particularly directing special bail to be given, in actions of trespass, actions on the case for *trover* or other wrongs, and all personal actions, except such as shall be hereafter particularly mentioned, the plaintiff or his attorney shall on pain of having his suit dismissed with costs, indorse on the original writ, or subsequent process the true species of action, that the sheriff to whom the same is directed, may be thereby informed whether bail is to be demanded on the execution thereof. In all actions of debt founded on any writing obligatory, all actions of covenant, or detinue, in which cases the true species of action shall be endorsed on the writ as before directed, and that appearance bail is to be required; the sheriff shall return on the writ the name of the bail by him taken, and a copy of the bail bond to the clerk's office, before the day of appearance, and if the defendant shall fail to appear accordingly, or shall not† give special bail being ruled thereto by the court, the bail for appearance may defend the suit, and shall be

Plaintiff must
endorse true spe-
cies of action.

Direction to
sheriff where
bail is required.

when the bail
may defend the
suit.

* The word "such" is not in the roll.

† In the printed copies the words "fail to" are put in the place of "not."

1795

How bail to be
given in deti-
nue.

When sheriff
may defend a
suit.

When bail ob-
jected to.

Sheriff's reme-
dedy against
bail.

Office judg-
ments when let
said.

Errors in the
office how rec-
tified.

Sheriff's and
bail's remedy
against defend-
ant.

subject to the same judgment and recovery as the defendant might or would be subject to if he had appeared and given special bail; and in actions of detinue, the bail-piece shall be so changed as to subject the bail to the restitution of the thing whether animate or inanimate, sued for, or the alternative value, as the court may judge. And if the sheriff shall not return bail, and the copy of the bail bond or the bail returned shall be adjudged insufficient by the court, and the defendant shall fail to appear and give special bail, if ruled thereto, in such case the sheriff may have like liberty of defence, and shall be subject to the same recovery as is provided in the case of appearance bail: and if the sheriff depart this life before judgment be confirmed against him, in such case the judgment shall be confirmed against his executors or administrators, and if there shall not be a certificate of probate or administration granted, then it may be confirmed against his estate, and a writ of *fieri facias* may in either case be issued: but the plaintiff shall object to the sufficiency of the bail during the sitting of the court, next succeeding that to which the writ is returnable, or in the office on the first or second rule day, and at no time thereafter.

SEC. 14. All questions concerning the sufficiency of bail so objected to in the office, shall be determined by the court at their next succeeding term, and in all cases where the bail shall be judged insufficient and judgment entered against the sheriff, he shall have the same remedy against the estate of the bail, as against the estate of the defendant. And that every judgment entered in the office against the defendant and bail, or against the defendant and sheriff, shall be set aside if the defendant at the succeeding court, shall be allowed to appear without bail, put in good bail, being ruled so to do, or surrender himself in custody, and plead to issue immediately.

SEC. 15. Each district court shall regulate all other proceedings in the office during the preceding vacation, and rectify any mistakes or errors which may have happened therein. In every case where judgment shall be confirmed against any defendant or defendants and bail, or the sheriff, his executors, administrators or estate, as the case may be, the court upon motion of such bail, or such sheriff, his executors or administrators, or any other person on behalf of his estate, may order an attachment

against the estate of such defendant or defendants, returnable to the next succeeding court, and upon the execution and return of such attachment, the court shall order the estate seized, or so much thereof as will be sufficient to satisfy the judgment and costs, and all costs accruing under the attachment, to be sold as goods taken in execution upon a *fieri facias*, and out of the money such judgment and costs shall be satisfied, and the surplus (if any) be restored to the defendant or defendants.

1795.

SEC. 16. Any judge of the district court, when the court is not sitting, or any justice of the peace, may take recognisance of special bail, in any action therein depending, which shall be transmitted by the person taking the same, before the next succeeding court, to the clerk of the said court, to be filed with the papers in such action: and if the plaintiff or his attorney shall except to the sufficiency of the bail so taken, notice of such exception shall be given to the defendant or his attorney, at least ten days previous to the day on which such exception shall be taken: and if such bail shall be adjudged insufficient by the court, the recognizance thereof shall be discharged, and such proceedings shall be had, as if no such bail had been taken.

How special
bail taken and
excepted.

SEC. 17. Every special bail may surrender his principal before the court where the suit hath been or shall be depending, at any time either before or after judgment shall be given. *Provided*, such surrender be made before the appearance day of the first *scieri facias*, against the bail returned executed, or of the second returned *nihil*, but in either case the special bail shall pay the costs of the *scieri facias*, and judgment for the same shall be entered against him accordingly; upon such surrender the bail shall be discharged, and the defendant or defendants shall be committed to the custody of the sheriff or jailor attending such court, if the plaintiff or his attorney shall desire the same; or such special bail may discharge him or herself, by surrendering the principal or principals to the sheriff of the county where the original writ was served, and such sheriff shall receive such defendant or defendants and commit him, her, or them, to the jail of his county, and give a receipt for the body or bodies of such defendant or defendants, which shall be by the bail transmitted to the clerk of the court where

Surrender of
principal and
the proceedings
thereupon.

1795

the suit was depending. When such surrender after judgment shall be made to the sheriff, he shall keep the defendant or defendants in custody in the same manner, and subject to the like rules, as are provided for debtors committed in execution, for the space of twenty days, unless the creditor, his agent or attorney, shall sooner consent to his, her, or their discharge; the bail shall give immediate notice of such render to the creditor, his attorney or agent; and if within the said twenty days, such creditor, his attorney or agent shall not in writing charge the debtor or debtors in execution, he, she or they shall be forthwith discharged out of custody, but the plaintiff or plaintiffs may nevertheless afterwards sue out any legal execution against such debtor or debtors, without suing out a *scieri facias*.

Proceedings against a defendant in custody.

SEC. 18. When the sheriff or other proper officer shall return on any original or *mesne* process, that he hath taken the body of any defendant and committed him to prison for the want of any appearance-bail, the plaintiff may proceed and the defendant make his defence in like manner as if appearance bail had been entered and accepted; but the defendant shall not be discharged out of custody, until he shall put in good bail, or the plaintiff shall be ruled by the court to accept an appearance without bail. And where any defendant after an appearance entered, shall be confined to prison, the plaintiff shall file his declaration and give a rule to plead, and deliver copies of such declaration and rules to the defendant or his attorney; and if the defendant shall fail to enter his plea within two months after receiving such declaration and notice, the plaintiff shall have his judgment by default as in other cases.

Mode of issuing process.

SEC. 19. Where the sheriff or other proper officer shall return, on any writ of *capias* to answer in any civil action that the defendant is not found within his bailiwick, the plaintiff may either sue out an *alias* or a *pluries* until the defendant shall be arrested, or a *testatum capias*, where he may have moved into another county, or may at his election sue out an attachment against the estate of the defendant, to force an appearance; and if the sheriff or other officer shall return that he hath attached any goods and the defendant shall not appear and replevy the goods, in case he should be ruled so to do, the plaintiff shall file his declaration and be entitled to a judgment for his debt

or damages and costs; which judgment shall be final in all actions of debt, founded on a specialty or other writing ascertaining the demand, unless the plaintiff shall chuse in any such case to have writ of enquiry of damages: and in other cases the damages shall be settled by a jury sworn to enquire thereof. The goods attached shall remain in the hands of the officer until such final judgment be entered up, and then be sold in the same manner as goods taken upon a *feri facias*. And if the judgment shall not thereby be satisfied, the plaintiff may sue out execution for the residue; and in case more goods be attached than will satisfy the judgment, the surplus shall be returned to the defendant.

1795.

SEC. 20. If any writ or process shall be executed and for want of a return thereof to the office from which an *alias*, *pluries* attachment or other process be awarded, the sheriff shall not execute such subsequent process, but shall return the first process by him executed, if it be in his possession, but if it be not in his possession, then he shall return the subsequent process with an endorsement of the execution of such first process and the name of the appearance bail, if any was taken, and shall also return a copy of the bail bond, on which there shall be the same proceedings as if the said first process had been duly returned.

Where process
executed but
not returned.

SEC. 21. Rules shall be monthly held in the clerk's office of each district court, beginning on a day to be fixed by each court.

Rule days.

SEC. 22. The plaintiff shall file his declaration in the clerk's office at the next succeeding rule day, after the defendant shall have entered his appearance, or the defendant may then enter a rule for the plaintiff to declare, which if he fail or neglect to do, at the succeeding rule day, or shall at any time fail to prosecute his suit, he shall be nonsuited, and pay to the defendant or tenant, besides his costs forty-five shillings, where his place of abode is at the distance of twenty-five miles or under, from the place of holding the said district court, and where it is more, two pence per mile, for every mile above twenty. One month after the plaintiff hath filed his declaration, he may give a rule to plead with the clerk; and if the defendant shall not plead accordingly at the expiration of such rule, the plaintiff may enter judgment for his debt or damages and costs. All rules to declare, plead, reply,

Rules in profe-
curing suits.

1795.

Enter judgment
by default.

rejoin, or for other proceedings, shall be given regularly from month to month, in the clerk's office, shall be entered in a book to be by him kept for that purpose, and shall expire on the succeeding rule day. No plea in abatement, shall be admitted or received, unless the party offering the same shall prove the truth thereof by oath or affirmation as the case may require. And no plea of *non est factum* offered by the person charged as the obligor or grantor of a deed, shall be admitted or received unless the truth thereof shall be proved in the like manner by oath or affirmation : And where any person, other than the obligors shall be defendants, such defendants shall prove by oath or affirmation that he or she verily believes that the deed or other writing on which the action is founded, is not the deed of the person charged, as the grantor or obligor thereof, in which last mentioned case the plea of *non est factum* shall not be admitted or received without such oath or affirmation : and where a plea in abatement shall be adjudged insufficient, the plaintiff shall recover full costs to the time of over ruling such plea, a lawyer's fee only excepted. The plaintiff in replevin, and the defendant in all other actions may plead as many several matters, whether of law or fact, as he shall think necessary for his defence. On the return of the *pluries* that the defendant is not found, the court may order a proclamation to issue, warning the defendant to appear at a certain day therein named, or that judgment will be rendered against him ; which proclamation shall be published on three successive court days at the door of the court house of the county to which the last process was directed, and also three times in the Kentucky Gazette ; and if such defendant fail to appear pursuant to such proclamation, the same proceedings shall be had, and the same judgment given, as in other cases of default. All judgments by default for want of an appearance, or special bail, or pleas as aforesaid, and nonsuits, or dismissions obtained in the office and not set aside on the third day of the next succeeding district court, shall be entered by the clerk as of that day ; which judgments shall be final in all actions of debt, founded on any specialty or other writing ascertaining the debt or demand, unless the plaintiff shall in any such case chuse to have a writ of enquiry of damages, and in all other cases the damages shall be ascertained by a jury to be impannelled and sworn

to enquire thereof as is hereafter directed. Before every district court the clerk shall enter in a particular docket, all such causes (and those only) in which an issue is to be tried, or enquiry of damages to be made, or a special verdict, case agreed, demurrer or other matter of law is to be argued, in the same order as they stand in the course of proceedings, setting as near as may be, an equal number of causes to each day. Juries *de medietate lingue*, may be directed by the court to be summoned. Jurors knowing any thing relative to the point in issue, shall disclose the same in open court. Any juror guilty of a contempt to the court, shall be fined by the court any sum not exceeding ten pounds, and may be imprisoned by the court for any time not exceeding twenty-four hours. Papers read in evidence, though not under seal, may be carried from the bar by the jury. No sheriff shall converse with a juror, but by order of the court. The fee for summoning a jury shall be six shillings, to be taxed in the bill of costs. In all cases where witnesses are required to attend the district court, a summons shall issue by the clerk expressing the day and place where they shall appear, the name of the parties to the suit, and in whose behalf summoned. When any witness shall be about to go out of the state, or by age, sickness, or otherwise shall be unable to attend court, upon affidavit thereof, or on a certificate to that effect from any justice of the peace, the clerk may, upon request of either party, award a commission for taking the deposition of such witness, *de bene esse*, to be read as evidence at the trial, in case the witness shall be unable to attend: but the party obtaining such commission, shall give reasonable notice to the other party, of the time and place of taking such deposition, otherwise the same shall be void. On affidavit that a witness resides beyond sea, or in any foreign country, or in any of the United States, the court wherein the suit is depending, may on request of either party, direct a commission to issue from the clerk's office, directed to such commissioners not exceeding five, as shall be nominated and agreed upon by the parties litigant, for which purpose the party applying for a commission in such cases, shall give the adverse party, his attorney or agent, ten days previous notice of the day of his intended application to the court, without which, no commission shall issue; and if the adverse party, his at-

1795.

Rules for docking causes.

Summon certain juries.

How punished for contempt.

Certain papers may be carried from the bar by the jury. Fee to sheriff for summoning jury.

Rules in procuring testimony.

Notice of taking depositions.

1795.

Proviso.

Deposition of
material wit-
ness to be takenPunishment for
refusing to give
testimony.Interpreters to
be sworn.

Proceedings.

torney or agent, shall not attend for that purpose, in that case the party praying the commission, shall nominate the commissioners himself, any three of which may proceed to execute the commission. *Provided nevertheless*, that in either case, reasonable notice shall be given to the adverse party, of the time and place of taking such deposition, and the costs of giving such notice as aforesaid, as well as of taking such deposition or depositions, in any or either of the United States, or beyond sea, or in any foreign country, may be taxed by the court, against the party, who in their opinion ought in justice to pay the same. If any party in a suit at common law, shall make oath that he verily believes his claim or defence, or as the case may be, or a material point thereof, depends on a single witness; the court or the clerk in vacation, may award a commission to take the deposition of such witness *de bene esse*, although he or she be not about to depart the country, nor under any disability; the party in such case giving reasonable notice of the time and place of taking such deposition to the adverse party. If any person summoned as a witness and attending the court or commissioners to take his or her depositions as aforesaid, shall refuse to give evidence upon oath or affirmation, as the case may be, to the best of his or her knowledge; any person so refusing, shall be committed to prison by the court of commissioners, there to remain without bail or mainprize, until he or she shall give such evidence. Any person summoned to give testimony and failing to attend not having a reasonable excuse, he or she shall be fined by the court from which the *subpoena* issued, in any sum not exceeding three pounds, and shall be moreover liable to the party injured for the want of his or her testimony, by action on the case, in any court of record. Interpreters may be sworn truly to interpret, when necessary. Every person desirous of suffering a nonsuit, shall do so before the jury retire from the bar. Not more than two new trials shall be granted to the same party in any cause. Any party to a suit praying a continuance, shall pay the costs of such continuance if granted by the court. If on an issue concerning several things in one count in detinue, and no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the thing omitted. Where there are several counts, one of which is faulty, and entire damages are given, the ver-

dict shall be good, but the defendant may apply to the court to instruct the jury to disregard such faulty count. A judgment on confession shall be equal to a release of errors. In all judgments for plaintiff or defendant, the clerk shall cause a lawyer's fee to be taxed in the bill of costs. There shall not be allowed in the bill of costs, a charge for more than three witnesses for the proof of any particular fact. Executions may issue from any district court to any sheriff or coroner, and be returnable to the first day of such court. If any bond for the delivery of property, be quashed as faulty, the sheriff taking the same, shall at all times be liable for damages to the party injured, or his representatives. Where any cause shall be finally determined, the clerk of the district court shall enter all the pleadings and papers filed as evidence therein, and the judgment therefor, so as to make a complete record thereof. And those wherein the title of land is determined, shall be entered in a separate book, to be kept for that purpose. If a party in a cause at present depending in the court of appeals, in a case in which the said court had original jurisdiction before the passage of this act, whether complainant or defendant, shall petition the judges of the said court, at any time before trial, to remove the said cause for trial to the district court in which the land in dispute shall lie; it shall be the duty of the said judges to direct the clerk to remove all the original papers filed in the said suit, to the office of the clerk of such district court, whose duty it shall be to receive the same: And the clerk of the court of appeals, shall certify to the clerk of the district court, the situation of the said suit, on the rule or trial docket of the court of appeals, and the steps which have been taken in the said court, which shall be a guide to the clerk of the district court, who shall place the said suit on his docket, as nearly as may be, in the same situation it stood on the docket in the court of appeals. And the clerk of the court of appeals shall receive from the party applying for the papers, the sum of six shillings for his services therein. If any party applying for and receiving papers as aforesaid from the clerk of the court of appeals, shall fail to deliver the same to the clerk of the district court within twenty days, he shall forfeit and pay the sum of five hundred pounds, to be recovered by action of debt or information in any court of record, by any person who will

1795.

Issue executions

Sheriff liable for damages when bond for delivery of property is quashed.

Make complete records.

To remove suits from court of appeals to district court.

Clerk's fees.

Penalty for not delivering papers.

1795

How judgments
of late supreme
court may be
examined.

sue for the same ; and shall moreover be liable to the action of the party aggrieved. Any person or persons thinking him or themselves aggrieved by the judgment of the former supreme court for the district of Kentucky, provided the same be originally cognizable therein, shall have the liberty of an appeal from any such judgment, to a district court, or shall have such other process as shall be proper, to bring such cause or judgment before a district court, under the same rules and regulations as before directed for the removal of a suit from one district court to another : whereupon the district court shall proceed to hear and determine the same, and shall give such judgment thereon as the former supreme court ought to have done.

Rules and pro-
ceedings in
chancery.

SEC. 23. Whenever a *subpoena* in chancery is returned executed, the complainant shall within three months thereafter file his bill, and if he fails so to do within that period, the suit shall stand *ipso facto* dismissed with costs.

SEC. 24. If the defendant does not file his answer within three months after the complainant shall have filed his bill, having been also served with a *subpoena*, the complainant may issue an attachment against the defendant, and upon its being returned executed, or a copy left at the defendant's place of residence, if he do not appear or obstinately refuse to answer, the complainant may proceed to take his bill *pro confesso*, and the court shall decree the matter thereof, or he may have a general commission to take depositions, or he may move the court to bring in the defendant to answer interrogatories at his election, and proceed on to hearing in the two last cases, as if the answer had been filed, and the cause was at issue.

Time allowed
for taking de-
positions.

SEC. 25. Where a general commission shall issue for taking depositions upon answer and replication, five months from the time of the replication, shall be allowed the parties for taking their depositions, and either party may at the expiration of six months set the same for hearing ; nor shall any deposition taken after that time, be read as evidence on the hearing, except the same was taken by consent of the parties, by special order of court or out of the state. Upon the complainant's dismissing his bill, or the defendant's dismissing the same, for want of prosecution, the complainant shall pay costs, to be taxed

IV. YEAR OF THE COMMONWEALTH.

313

by the clerk of the court, for which costs an attachment or other process of contempt may issue, returnable to the next district court. The complainant may amend his bill before the defendant or his attorney hath taken out a copy thereof, or in a small matter afterwards, without paying costs ; but if he amend in a material point, after such copy obtained, he shall pay the defendant all costs occasioned thereby. No process of contempt shall issue unless the *subpoena* be returned served, by a sworn officer, or affidavit be made of the service thereof. Every defendant may swear to his answer before any justice of the peace. When a cross bill shall be exhibited, the defendant or defendants to the first bill shall answer thereto before the defendant or defendants to the cross bill, shall be compelled to answer such cross bill. The complainant shall reply or file exceptions within two calendar months after the answer shall have been put in. If he fails so to do, the defendant may give a rule to reply with the clerk of the court, which being expired and no replication or exceptions filed, the suit shall be dismissed with costs, but the court may order the same to be retained if they see cause, on payment of costs. If the complainant's attorney shall except to any answer as insufficient, he may file his exceptions and give a rule with the clerk, for a better answer within two calendar months; and if within that time the defendant shall put in a sufficient answer, the same shall be received without costs ; but if any defendant insist on the sufficiency of his answer, or neglect or refuse to put in a sufficient answer, or shall put in another insufficient answer, the plaintiff may set down the exceptions to be argued at the next court, and after the expiration of such rule, or any second insufficient answer put in, no further or other answer shall be received but on payment of costs. If upon argument the complainant's exceptions shall be over ruled, or the defendant's answer adjudged insufficient, the complainant shall pay to the defendant, or the defendant to the complainant, such costs as shall be allowed by the court. Upon a second answer adjudged insufficient, the costs shall be doubled. If a defendant shall put in a third insufficient answer, which shall be so adjudged, he or she may be examined upon interrogatories, and committed until he or she answer them, or pay costs. If the defendant after process of contempt, put in an insufficient answer

1795.

Amendment
without costs.

With costs.

In case of cross
bills.

Exceptions to
an answer.

When second
answer insuffi-
cient.

1795.

Of rejoinder.

Plea or demur-
rer over ruled,
no other admit-
ted.Proceedings a-
gainst absent
defendants.

which shall be so adjudged, the complainant may go on with the subsequent process of contempt, as if no answer had been put in. No defendant shall be admitted to put in a rejoinder, unless it be filed on or before the expiration of the rule to rejoin, but the complainant may proceed to set his cause down for hearing. If the complainant conceives any plea or demurrer to be naught, either by the matter or the manner of it, he may set it at the rules to be argued : or if he thinks the plea good but not true, he may take issue upon it, and proceed to trial by jury, as hath been heretofore used in other causes in chancery, where trial hath been by jury ; and if thereupon the plea shall be found false, the complainant shall have the same advantages as if it had been so found by verdict in a suit at common law. If a plea or demurrer be over ruled, no other plea or demurrer shall be thereafter received, but the defendant shall answer the allegations of the bill. If the complainant shall not proceed to reply to, or set for hearing as before mentioned, any plea or demurrer, at the second rule day after filing the same, the bill may be dismissed of course, with costs. Upon a plea or demurrer, argued and over ruled, costs shall be paid, as where an answer is adjudged insufficient, and the defendant shall answer within two calendar months after, but if adjudged good, the defendant shall have his costs. If any defendant after a demurrer shall have been over ruled, refuse to answer, the bill shall be taken as confessed, and the matter thereof decreed. If any suit shall be commenced in any district court of which the said court has cognizance by law, against any defendant or defendants who are out of this state, and others within the district having in their hands effects of, or being indebted to such absent defendant or defendants, and the appearance of such absentees be not entered, and security given to the satisfaction of the court for performing the decrees, upon affidavit that such defendant or defendants are out of the state, or that upon enquiry at his, her, or their usual place of abode, he, she or they could not be found, so as to be served with process, the said court may make any order, and require security if it appear to be necessary, to restrain the defendants in the districts from paying, conveying away, or secreting the debts by them owing to, or the effects in their hands of such absent defendant or defendants, and for that purpose may

order such debts to be paid, and effects delivered, as to the said complainant or complainants, upon their giving sufficient security for the return thereof to such persons and in such manner as the court shall direct.

1795.

SEC. 26. The court shall also appoint some day in the succeeding district court, for the absent defendant or defendants to tender his, her or their appearance to the suit, and give security for performing the decree, a copy of which order shall forthwith be published in the Kentucky Gazette, and continued for two months successively, and shall be also published on some Sunday immediately after divine service, at the door of such church or meeting house as the said court shall appoint and direct, and another copy shall forthwith be posted at the front door of the court house of said court; if such absent defendant or defendants, shall not appear and give security within the time limited, or such further time as the court shall allow them, for good cause shewn, the court may proceed to take such proof as the complainant shall offer, and if they shall be thereupon satisfied of the justice of the demand, they may order the bill to be taken as confessed, and make such order and decree therein as shall appear just, requiring the complainant or complainants to give such security as the court shall approve, for abiding such future order, as may be made for restoring the estate or effects to absent defendant or defendants, upon his, her or their appearance and answering the bill. And if the complainant or complainants shall refuse to give, or not be able to procure such security, the effects shall remain under the direction of the court, and be disposed of by them in such manner as to them shall seem just.

Absent defendants to enter appearance.

Bill taken as confessed.

SEC. 27. If any person or persons who shall be out of the commonwealth, at the time any decree is pronounced as aforesaid, shall within seven years from the making of such decree, return and appear openly, or in case of his or her death, if his or her heirs, executors or administrators, shall within the said seven years, be and appear openly within this commonwealth, the complainant or complainants, their executors or administrators, shall serve such person or persons so returning or appearing, with a copy of the decree within a reasonable time after such return or appearance shall be known to the complainant or complainants; and thereupon such defendants and their representatives, may, within twelve months af-

1795.

ter such service, or the defendants served with a copy, or their representatives, may within seven years after the decree pronounced, appear in court and petition to have the cause re-heard, and upon their paying down or giving security for the payment of such costs as the court shall think reasonable, they shall be admitted to answer the bill. And such proceedings shall be had, as if there had been no former decree in the cause, but otherwise the said decree shall be final.

Regulate ap-
peals and writs
of error.

SEC. 28. Appeals and writs of error, shall lie from any district court to the court of appeals, in the same manner and under the same rules and regulations as they now do from the courts of quarter sessions.

To examine
person charged
with crime.

SEC. 29. When any person, not being a slave, shall be charged before a justice of the peace, with any criminal offence, which in the opinion of such justice, ought to be examined into by the court of quarter sessions, the said justice shall take the recognizance of all material witnesses to appear before such court, and immediately by his warrant, commit the prisoner so charged, to the jail of his county, and moreover shall issue his warrant to the sheriff of the county, requiring him to summon the justices of the court to meet at the court house on a day to be fixed by said justice, not less than five nor more than ten days after the date thereof, to hold a court for

To examine
the fact.

the examination of the fact; and a sufficient number of justices to constitute a court having met as aforesaid, shall consider whether as the case may appear to them, the prisoner may be discharged from further prosecution, may be tried in the court of quarter sessions, or must be tried in the district court: and if they are of opinion that the prisoner may be tried in the court of quarter sessions, the prisoner shall be bound over to the next court of quarter sessions, to be held for that county, for trial; or on refusing to give sufficient bail, shall be remanded to the jail of the county, and there to remain until such court, or till he or she shall be bailed: but if they should

How tried in
court of quarter
sessions.

How in district
court.

be of opinion that the prisoner ought to be tried in the district court, they shall take the depositions of the witnesses, and bind such as they shall think proper by recognizance, to appear and give evidence against such criminal at his or her trial; and having remanded the prisoner to jail, any two justices by warrant from under their hands and seals, shall direct the sheriff or his deputy to remand

the prisoner, and commit him or her to the jail of the district, there to be safely kept until he or she shall be discharged by due course of law: by virtue of which warrant, the sheriff shall as soon as may be, remove the prisoner and deliver him or her to the keeper of the district jail, who shall receive and safely keep him or her accordingly; and for enabling the sheriff safely to convey and deliver such prisoners, the said two justices by their warrant, shall permit him as well within the county as without, to impress such and so many men, horses and boats, as shall be necessary for the guard and safe conveyance of such prisoners, and all persons are to pay due obedience to such warrant. A public jailor shall be appointed by the governor to each district court, and give bond and security to the governor and his successors. The judges attending the district court shall have power to superintend and regulate the jails. The jailor during his continuance in office, shall be exempt from serving in the militia and serving on juries. The keeper of the district jail shall constantly attend the said court and execute the commands of the court from time to time. The keeper of the district jail, by order of any two justices of his county, may impress guards for the safe keeping of all prisoners in his custody. The fee to the sheriff or jailor for keeping any prisoner, shall be one shilling per day. If a prisoner shall desire witnesses to be summoned to attend the examining court, or the trial at the district court, the clerk of the said court, or the clerk of the court of quarter sessions, as the case may be, shall issue *subpoenas* accordingly. When any person shall be so removed to be tried for treason or felony, the clerk of the court of quarter sessions where the prisoner was tried, shall immediately after the court holden for his or her examination, transmit to the attorney for the commonwealth, in the district, a copy of the warrant for his or her commitment, and of the depositions taken on the examination, and shall moreover issue a writ of *venire facias*, to the sheriff of the county, commanding him to summon twelve good and lawful men, being free holders of the county, residing as near as may be to the place where the fact is alledged to have been committed, to come before the district court on the first day of its next succeeding term, and return a pannel of their names: which free holders, or so many of them as shall appear, not being

1795

How to be removed from county to district jail.

Jailor to be appointed.
Judges to superintend jail.
Jailor free from militia, &c.

May impress guards.

Summon witnesses for prisoner.

Duty of clerk where person sent for further trial.

Summon venire

1795.	challenged, together with so many other good and lawful free-holders of the by-standers as will make up the number twelve, shall be a lawful jury for the trial of such persons. Every <i>venire</i> man summoned and attending the district court, shall have the same allowance for traveling and attending, as is now allowed a <i>venire</i> man in the court of oyer and terminer. The sheriff for the time being of the county in which the district court is holden, shall before every meeting of the district court, summon twenty-four house keepers, qualified as the law directs, to appear at the succeeding district court, on the first day thereof, which the said sheriff is hereby empowered to do as well without the county as within the same. And the said twenty-four men, or any sixteen thereof shall be a grand jury, and shall enquire of and present all treasons, murders, felonies or other misdemeanors whatever, which shall have been committed or done within the district. And upon any indictment for a capital offence being found by a grand jury, to be true against any person or persons, the judges shall cause such person or persons to be immediately arraigned and tried by a petit jury, summoned as herein before directed, and he, she, or they being found guilty, pass judgment as the law directs, and thereupon award execution, and if they be found not guilty, to acquit him or her of the charge. Provided that in all trials, the defendant shall be allowed counsel. And that where sentence shall be passed upon any prisoner, there shall be one calendar month at least, between the judgment and execution. <i>Provided also</i> , that in case of the sickness or non-attendance of any grand juror or grand jurors, after he or they shall be sworn, it shall be lawful for the court to cause others to be sworn in his or their stead. No grand jury shall make any presentment of their own knowledge, upon the information of fewer than two of their own body, nor where the penalty inflicted by law is less than twenty-five shillings, or two hundred pounds of tobacco. Every person summoned to appear as a grand juror, and failing to attend, not having a reasonable excuse, shall be fined by the court three pounds, to the use of the commonwealth. Upon any presentment made of an offence not capital, the court shall order the clerk to issue a summons, or other proper process against the person or persons presented, to appear at the next court, and answer the pre-
Their allowance.	
Sheriff to summon jury.	
Their duty.	
When indictment found prisoner to be tried immediately.	
Time between judgment and execution. <i>Provido.</i>	
Rules in making presentments.	

IV. YEAR OF THE COMMONWEALTH.

319

sentment. Whereupon the court shall hear and determine the same according to law. It shall be the duty of the district courts to appoint proper persons to prosecute for the commonwealth, in such courts as the attorney general cannot attend himself. Each person so appointed, shall receive for his services, such compensation as the court of the district where he shall prosecute, shall think him entitled to : a copy of which shall be certified by the clerk of the court granting the same, to the auditor of public accounts, who shall thereupon audit the same, and issue a warrant accordingly. Prison rules and bounds shall be assigned by the district courts. Where the prisoner shall be convicted and hath estate sufficient to pay the charges of the prosecution, the whole shall be paid out of such estate, and the public only made chargeable where there is no estate, or not sufficient to be found. No justice of the peace of any court, who shall have committed any person for examination, to the county court or other examining court, shall be sworn on the petit jury impannelled for the trial of such person. The sheriff of the county where any district court shall sit, shall execute all judgments rendered by such courts in any criminal case. *Provided* such judgments are by law to be executed in the said county. The sheriff of every county in which a district court shall be held, shall attend on and execute the orders of the said court, and the court shall make a reasonable allowance to the sheriff and jailor attending the same for their trouble, and the auditor of public accounts is hereby required to issue warrants in favor of such persons agreeably to the certificates of the clerks of the said courts respectively. When any debtor is in custody on several executions, it shall not be lawful for such debtor to demand any more or other dieting, than if he was in custody on one execution only : nor shall any sheriff or jailor demand or receive any more than the rate fixed by law in case of a debtor, confined on one execution, which shall be paid by the creditor, at whose suit such debtor was first taken. The jail of the several counties wherein a district court is held, shall be used as the district or public jail, until a district jail shall be built, or the same shall be altered by law. The fees of the sheriff or other proper officer for executing any process issued from the district court and not provided for in this act, shall be the same as is allowed for serving

1795.

Appoint attorneys for commonwealth. Their compensation.

How paid.

Prison rules.

Charges of prosecution how paid.

Who to execute judgments in criminal cases.

Sheriff of what county to attend court.

His allowance.

Where debtor in custody on several executions.

Use the county jail.

Sheriff's fees.

1795.	like process from the courts of quarter sessions, and in all other cases, the same fee as is allowed for similar services in the court of appeals. The judges of the district
Salary of judges.	courts shall be allowed the sum of one hundred and fifty
How paid.	pounds each, annually, for their salary, to be paid after the same manner, and in the same proportions as the salary of the judges of the court of appeals are now by law directed to be paid. There shall be on all original
Tax on process	process issuing from the district courts a tax of six shillings, to be paid by the party at whose instance the process shall issue, to be accounted for by the clerk of each
Collected and accounted for.	court, in the same manner and under the same regulations as the clerks of the courts of quarter sessions are now directed to account for taxes by them received.
Where clerk may keep office	The clerks of the district courts shall keep their offices at the place of holding each district court, under the penalty of fifty pounds to be recovered by action of debt or information in any court of record, the one half to the informer, the other half to the use of the commonwealth.
Deeds, &c. recorded in district court.	All deeds and other writings may be recorded in the office of any district court, provided if the same be for the conveyance of land, that the lands conveyed, lie within the said district. And if the lands conveyed by one deed,
and in court of appeals.	shall lie in part of two districts; the said deed may be recorded in the office of the court of appeals. And it shall be the duty of the clerks of the district courts, and court of appeals, in the cases before mentioned, to receive the said deeds in their offices out of court, and record the same, taking the acknowledgment and proof of execution as is directed by law.
How court houses & jails to be furnished.	SEC. 30. <i>And be it further enacted</i> , That the counties in which district courts are held agreeably to this act, shall furnish a court house and a sufficient jail at their own expence, except the county of Franklin. But if the said counties refuse or fail so to do, and the several counties composing the district are compelled to furnish a court house and jail, the same shall be fixed as near the centre of the district as situation and convenience will admit of.
Criminals to be sent to public jail in Frankfort to be tried.	SEC. 31. <i>And be it further enacted</i> , That all criminals sent for a further trial by the court of any county within this state shall be committed to the public jail in Frankfort; and all criminals shall be tried by the district court held in the state house in Frankfort; and the judges of the said

court shall set apart the first three days of each court for the trial of criminals, any thing in this act to the contrary notwithstanding.

1795.

So much of every act or acts as establishes a court of oyer and terminer shall be and the same is hereby repealed.

CHAPTER CCII.

An ACT to amend an act entitled "An act to amend an act establishing a Permanent Revenue."

Approved December 19, 1795.

See the prelection to Chapter 10.

SECTION 1. *BE it enacted by the General Assembly,* With whom to
That no person shall give in a list of his taxable prop- list property.
erty to a commissioner in any county except the county in
which he shall reside : every person applied to by a com-
missioner, shall give in upon oath, besides the number
of acres in each tract and the county and water course
in which it is situate, an account of the names in which
the entries were made, and for whom surveyed, if a sur- Regulations in
vey has been made, and to whom patented, if a patent lifting lands.
has issued if he is acquainted therewith : and the com-
missioner shall insert the same in his book. And if the
party giving in his list of land shall swear that he does
not know for whom the land was entered or surveyed, or
to whom patented, the commissioner shall be at liberty
to obtain the best information he can get, and insert the
same in his book. The commonwealth shall have a per-
petual lien on every tract of land and every part thereof, State to have
lien on lands.
for the amount of all taxes due thereon ; and any lands, To sell prop-
erty to pay taxes.
slaves, goods or chattels, that any person may be posses-
sed of, may be sold for the payment of all taxes due from
such person, and where no land or other property can be
found on which distress can be made for the payment of
taxes due from any person, the sheriff shall have credit
with the auditor for the amount of such taxes, on his pro-
ducing a certificate thereof from the court of the county ;
and such taxes due shall bear ten *per centum* interest un-
til paid ; and that no alienation of lands belonging to
such persons shall effect the claim and lien of this com-
monwealth, until the taxes due from such person with the
interest thereon is paid.

State to have
lien on lands.
To sell prop-
erty to pay taxes.

Where there is
no property.

Interest on tax-
es due.
Lien not effect-
ed by alienation

SEC. 2. *And be it further enacted,* That the auditor
shall keep a book for the purpose of receiving and enter-
ing lands of non-residents in the manner hereinafter
directed, and all non-residents shall in future enter their
lands with the auditor who shall administer an oath to

With whom
non-residents to
enter lands.

1795. the person delivering such lists or by any other means procure the best information in his power for the purpose of ascertaining the quality of such lands and enter each tract in the class he shall judge right and proper, placing such tract under the name of the county in which it shall be situate ; and every non-resident shall enter his lands agreeably to the rules and regulations of this act in the case of residents. All taxes due, or which shall hereafter become due with the interest on the lands of non-residents, shall be paid to the treasurer, and his receipt being produced to the auditor, he shall give such non-resident a *quietus* ; no payment shall be considered a discharge of any tax until such *quietus* shall be obtained. When any non-resident shall fail to pay the tax and interest due on any tract of land within the time, and agreeably to the regulations prescribed by law, the auditor shall transmit the account of the taxes due, to the sheriff of that county where any lands of such non-residents may lie, under the like regulations as lands listed by residents with a commissioner lying in a different county, and the sheriff shall proceed to sell the said tract or tracts lying within his county in the same manner and under the like regulations as resident's lands are by law directed to be sold.
- To whom to pay taxes. Sec. 3. And be it further enacted, That where any sheriff has received or shall hereafter receive from any non-resident or non-residents any land tax, and shall not account for and pay the same into the treasury, within the time prescribed by law, such sheriff shall be answerable for the money with interest thereon from the receipt thereof : and moreover such sheriff and his security shall be liable to the party aggrieved for double damages and costs, by action on the case in any court of record within the commonwealth, having cognizance in similar cases. And when any person shall be entitled to a credit for any taxes paid on any lands for the years 1792 and 1793 such person shall apply to the county court who shall direct the sheriff to give such person credit for the amount thereof in any tax which may become due. And the court directing such credit shall transmit a certificate thereof to the auditor with a list of insolvencies, of persons removed out of the county ; and the auditor shall give such sheriff credit therefor on a settlement of his accounts.
- To obtain *quietus*. Credit for taxes how obtained.
- To compel non residents to pay.
- Sell their lands for taxes.
- Sheriff liable for money received from them

Whereas doubts have arisen concerning the construction of the act passed at the last session of assembly, en-

titled "an act to amend an act establishing a permanent revenue," respecting the reduction of the taxes one fourth; for remedy whereof,

1795.

SEC. 4. *Be it enacted*, that the taxes which were or ought to have been collected in the year 1795, that were for the year 1794, be reduced one fourth, except the land tax that was due prior to that year, that was payable in the year 1795. And whereas in consequence of said doubts in some cases the collectors have only collected three fourths, on land that was due for the years 1792 and 1793, and it is proper that the arrearages of one fourth should be collected; for remedy whereof,

Taxes of 1794 reduced.

SEC. 5. *Be it enacted*, That it shall be the duty of the auditor to certify to the different collectors of each county, on or before the first day of March next, an account of the arrearages of taxes due on the collection made in the year 1795, for the land tax due for the year 1792 and 1793, in consequence of the deduction thereon made, with a list of the names of the persons from whom the same is due; and it shall be the duty of the different collectors to collect and account for the same in the same manner he is bound to collect the taxes due in the year 1796. And the auditor is further directed, that where the treasurer or collectors have collected the whole amount without any deduction of the tax due for the year 1794, that was received in the year 1795, to certify the same to the different collectors of each county where the same happened, describing the persons' names and amount; which collector is hereby directed to give a credit to the person or persons who have paid, without deduction, for the said amount in the next or any collection due from him.

To collect arrearages.

Where the tax of 1794 is collected.

SEC. 6. *And be it further enacted*, That where any person has lived on second or third rate land, he shall have credit for the surplus of said tax as is provided in case no person resided thereon.

Where persons have lived on 2d or 3d rate land.

SEC. 7. *And be it further enacted*, That the sheriffs of the several counties within this state shall give security which shall be approved of by the court of the county, in the month of November, in every year for the collection of the taxes due for that year.

Sheriff to give bond & security

SEC. 8. *And be it further enacted*, That the auditor shall receive the lists from the different sheriffs, of the lands listed within one county and lying in another, as if the said lists had been transmitted to him by the first day of May last, any law to the contrary notwithstanding.

List of land to be received by the auditor.

NOVEMBER SESSION,

1795

Commissioners
to keep books.

And that the commissioners' books may be uniform throughout the state,

SEC. 9. *Be it therefore enacted,* That each commissioner shall keep for the purpose of entering lands and other taxable property under this act, a book in the following form, to wit,

Mar 10	Date of receiving lists
15 John Doe.	Person's names chargeable with the tax.
18 R. Roe	1st. rate.
	2d. rate.
	3d. rate.
Acres of Land.	
200	Water course where the land lies.
400 Hickman	County where the land lies.
Stoner.	Person's names in which the land was entered.
Filkhuon.	Persons for whom surveyed.
Bourbon.	Person's names to whom the grant issued.
Fayette.	No. of white males above 21.
R. Roe.	White males above 16.
do.	Blacks above 16.
do.	Total blacks.
do.	Horses, mares, &c.
do.	Cattle.
do.	Coach and chariot wheels.
do.	Other carrig's with 4 wheels.
do.	Carriages with two wheels.
do.	Ordinary licence.
do.	Billiard tables.
do.	Retail stores.
do.	Stud horses.
do.	Rates of covering.

IV. YEAR OF THE COMMONWEALTH.

225

CHAPTER CCIII.

1795.

An Act concerning the town of Louisville.

Approved December 19. 1795.

SECTION 1. *Be it enacted by the general assembly,* That it shall and may be lawful for the qualified electors who have a right of suffrage for members to the general assembly, within the limits of the half acre lots within the town of Louisville, in the county of Jefferson, to elect and chuse annually, seven trustees, who shall be residents and free holders in said town, and of good reputation, which election shall be conducted by the sheriff, and be held at the court house.

Trustees to be appointed.

Qualification:

SEC. 2. The sheriff shall make a return of the persons elected immediately after such election to the clerk of the county, to be by him recorded, and the sheriff shall moreover deliver to the persons having the greatest number of votes, a copy of the poll, which shall be recorded with the proceedings of the trustees, in books to be by them kept for that purpose.

Sheriff's duty at elections.

SEC. 3. The said trustees when so elected, and their successors, or a majority of them, shall have power to appoint a clerk, to erect and keep in repair a market house in said town, to regulate and repair the streets, to remove nuisances and obstructions at the expence of the party who occasioned them, and to impose taxes not exceeding twenty five pounds annually on the titheables and property, real and personal, within the half acre lots in said town; to make provisions and regulations for the collecting and accounting for the taxes so imposed, by appointing a collector, taking bond and sufficient security of him for the faithful discharge of his duty; which collector shall have power to make distress for all delinquencies, or in case of refusal or neglect to pay the tax so imposed: and in case the said collector shall neglect or refuse to account for and pay up the several sums of money which he may or shall receive by virtue of his office, it shall and may be lawful for the trustees to whom the bond aforesaid was given, by motion in the county court (having given ten days previous notice) to recover against such collector and his security, or either of them, the full amount of such sum as it may appear he shall have collected, with costs. And the said trustees, or a majority of them, shall have power to make

Their powers,

1795. and establish such rules, ordinances and regulations as shall be by a majority of them thought proper and just, respecting the boundaries of lots in said town, and for the purpose of carrying this act into effect.
- Fill vacancies, SEC. 4. Vacancies occasioned by death, disqualification or otherwise, shall be supplied by elections to be made and held in manner herein before mentioned on a day to be named by the remaining trustees, and a return thereof made as heretofore directed.
- Disqualification SEC. 5. Whenever a trustee shall cease to be a freeholder, and inhabitant in said town, he shall be considered as disqualified, and another elected in his stead.
- When their powers cease. SEC. 6. Immediately after every annual election of trustees, as directed by this act, the powers of their predecessors shall cease, and the trustees so elected shall be put into possession of the property, papers and records, of which the trustees whom they succeeded had possession. And the said trustees shall have power and authority to levy on the inhabitants of said town, on half acre lots in the manner as before directed in this act, an additional sum annually not exceeding ten pounds, which shall be applied in the manner which shall seem most expedient to the trustees, to the purpose of clearing out and cleaning the harbor, in the mouth of Beargrass; and the said trustees shall superintend said harbor, and make such order respecting the landing and mooring of boats therein, as they shall think necessary for the preservation and keeping in repair the said harbor, and preventing nuisances and incumbrances therein.
- Levy additional sum. SEC. 2. *And be it further enacted*, That the inspection of tobacco, at Campbell's ware house, at the falls of Ohio, be suppressed, and one established in the town of Louisville, near the mouth of Beargrass, instead thereof, subject to the rules and regulations, as are by law established for erecting, keeping in repair, and appointing inspectors, and otherwise regulating inspections of tobacco within this state. And the inspectors to be appointed at such ware house, shall be allowed twenty five pounds per annum to be paid in the same manner as the salary of the inspectors at Campbell's ware house was paid.
- Inspector's salary. This act shall commence and be in force from the passage thereof.
- Commencement.

IV. YEAR OF THE COMMONWEALTH.

327

CHAPTER CCIV.

1795

An ACT to amend an act entitled "An act for the purpose of erecting a linen manufactory in George Town, and for other purposes."

Approved December 19, 1795.

Vide the observations on chap. 152.

CHAPTER CCV.

An ACT concerning Arbitrations.

Approved December 19, 1795.

See an act concerning awards passed at the January session of 1798, (vol. II. chap. 43) by which all former acts concerning awards or arbitrations then in force were repealed.

WHEREAS experience has suggested, that great inconveniences do arise to the citizens of this commonwealth, by reason that many suitors are burthened with enormous expences, and the final determination of their disputes protracted to a tedious length of time, which operates almost to a total denial of justice: for remedy whereof,

Preamble.

SECTION 1. *BE it enacted by the general assembly,* That it shall and may be lawful for all persons desirous to end any controversy or suit by arbitration, mutually to agree to submit the said controversy or suit to the decision and determination of any person or persons whom the said party so contending shall choose. And they are hereby authorised to nominate the person or persons so chosen, together with the nature of the disputes to them referred, to any court of record within this commonwealth, and such court is hereby required to direct their clerk to enter the same of record, and such court shall thereupon issue their order certified by their clerk, directed to the said person or persons so chosen, signifying the nature of the dispute, that is to them submitted, and they are hereby authorised and empowered by a *subpoena* or *subpoenas* under the hand and seals of them or either of them, directed to any sheriff or constable who shall execute the same, to cause to come before them at any time or place which they may choose, any person or persons, whom either of the parties so contending, may require, as well without as within the county, to give evidence touching

Of arbitrations.

Powers of arbitrators.

Subpoenas for witnesses.

1795.
 Penalty for not attending.

the premises, which witness or witnesses so summoned, shall be subjected to the same penalty and forfeiture for failure to attend and give evidence as they would be for failing to attend and give evidence in any court of judicature within this commonwealth.

Arbitrators to take oath.

SEC. 2. *And be it further enacted*, That the arbitrators so chosen before they enter on the investigation of such dispute, shall take an oath or affirmation, impartially to try and determine the dispute to them referred, according to law, evidence and the equity of the case, without favor or affection, to the best of their judgment, which oath shall be administered by any justice of the peace of the county, and such arbitrators so chosen, shall have

Further powers and duties.

power to hear and determine all matters of dispute to them referred, in the most speedy manner that the nature of the case will admit, and they are hereby required to give to each of the contending parties, one written copy of their award in full, and also to make return of one other copy, under his or their hand or seal or seals, to the same court from which the order before mentioned did issue, which shall be entered of record, and become a final end and decision of all and every controversy or suit to them so submitted, and be made a decree of such court, and shall not be invalidated, unless it shall be made appear to such court, that such award, arbitrament, or umpirage, was procured by corruption or other undue means, or that there was evident partiality in the arbitrators or umpires or any of them, and any award, arbitration, or umpirage procured by corruption or other undue means, or where there shall have been such evident partiality as aforesaid, such award may be set aside, and the party injured may thereupon appeal to the court of appeals and to no other court whatever. *Provided nevertheless*, that the said appeal be made within three months after the return of the said award and notice given to the defendant or defendants or their agents.

Effect of their award.

How awards set aside.

SEC. 3. *And be it further enacted*, That if the appeal aforesaid shall not be made within the time aforesaid, the court to which the award has been returned, are hereby authorised and required to award execution thereupon, in the same manner as if a regular suit had been instituted and judgment had thereupon.

Allowance to clerks.

SEC. 4. *And be it further enacted*, That the clerks shall be allowed two shillings for making each of the records,

IV. YEAR OF THE COMMONWEALTH.

329

by this act directed, and no more, and the same fees for
issuing execution and recording return as is allowed in
other cases in such court. 1795.

SEC. 5. *And be it further enacted*, That the arbitra-
tors appointed in conformity to this act, shall be allowed
for their services, nine shillings per day if demanded, and
all witnesses summoned and attending, shall be allowed
the same pay for travelling and attending, as they are now
allowed for travelling and attending the courts of quar-
ter sessions. To arbitrators.
To witnesses.

SEC. 6. *And be it further enacted*, That no award gi-
ven by the arbitrators, chosen as aforesaid, shall be set
aside for want of form, when such award contains the
substance of what was intended by such arbitrators. Award not to be
set aside.

This act shall commence and be in force from and af-
ter the passage thereof. Commence-
ment.

CHAPTER CCVI.

*An ACT establishing a town on the lands of Philemon
Thomas in the county of Mason.*

Approved December 19, 1795.

WHEREAS it is represented to the present general
assembly, that three hundred and twenty acres of land
lying in the county of Mason, at the head of Bracken
creek, the property of Philemon Thomas, hath been laid
off into lots and streets, for a town, and praying that the
same may be vested in trustees, and established a town
by the name of Germantown: Preamble.

Be it enacted, That all the right and title of the said
Philemon Thomas, to the said three hundred and twenty
acres of land, shall be and the same is hereby vested in
David Chiles, Whitfield Craig, Spencer Record, Tho-
mas Davis, and Thomas Hubbard, gentlemen, trustees,
and established a town by the name of Germantown. Town establish-
ed.
Name.
Powers of trust-
ees to convey
lots.
The said trustees or a majority of them, shall have pow-
er and they are hereby authorised to convey to the pur-
chasers of lots respectively in the said town by deed in
fee simple, with general warranty all such lots sold or
that may be sold by the said Philemon Thomas, which
deed shall bind the said Philemon Thomas, his heirs and
assigns to fulfill the covenants of the said warranty; the
said trustees shall have power and they are hereby au-
thorised to regulate the streets, and determine all dis-
Effect thereof,
Further powers

T 1

1795. *Pro-*
vided, that this act shall not be extended to effect the
 Rights of oth- right of any person other than the said Philemon Tho-
 ers saved. mas.

This act shall commence and be in force from and af-
 ter the passage thereof.

CHAPTER CCVII.

An act to establish Inspections of Flour and Hemp.

Approved, December 19, 1795.

Vide the prælection on chap. 58.

Preamble.

WHEREAS an act passed at the last session of as-
 sembly, entitled "an act to establish inspections of flour
 and hemp," has been found inadequate to the purposes it
 was intended to answer. Therefore,

Places of in-
 spection esta-
 blished.

SECTION 1. *BE* it enacted by the General Assembly,
 That one inspection of flour and hemp shall be establish-
 ed at each of the following places to wit : Frankfort,
 Cleveland's landing in Fayette, Stewart's creek ware-
 house on the Beech fork, at Maysville in the county of
 Mason, at Cynthiana in the county of Harrison, Louis-
 ville in Jefferson, Newport at the mouth of Licking, at
 the mouth of Dick's river, at the town of Warwick, at
 Holder's boat yard in the county of Clarke, at the mouth
 of Tate's creek in the county of Madison, Scott's ware
 house in the county of Woodford, Shepherdsville in the
 county of Jefferson, at Walter Beall's ware house in the
 county of Hardin, at Jacob Doom's at the mouth of Har-
 din's creek in the county of Washington, at Parker's on
 the Beech fork, and Paris in Bourbon. *Provided howe-*

Proviso.

ver, That no inspection shall be established at any of the
 aforesaid places, unless the courts of the counties in which
 the same shall be situated, shall agree with, and receive
 from, the proprietors of the land at the places aforesaid,
 bond and approved security to be given to the justices
 of the said courts and their successors, for supplying or
 building and keeping in repair such ware houses, for the
 inspection of flour and hemp, at the place so appointed,
 within such time and in such manner as they shall direct,
 and for furnishing weights and scales and such prizes as
 may be necessary, at his or her own expence. And the
 governor shall appoint in the manner prescribed by the

Governor to
 appoint inspec-
 tors.

IV. YEAR OF THE COMMONWEALTH.

331

constitution of this commonwealth, one fit and skilful person as inspector of flour and hemp at each of the aforesaid places, where such inspections may be established, or one fit and skilful person as inspector of hemp, and one other of flour, where it may be necessary; and the said inspectors shall hold their offices during two years if they shall so long behave themselves well. Any inspector whose office is established by this act, may be removed by the governor at the request of the county court, for neglect of duty, malfeasance, or corrupt practices, and the governor shall fill up the vacancy for the residue of the term for which the said inspector shall have been appointed.

SEC. 2. *And be it further enacted,* That all boulded wheat flour, and every cask thereof brought for exportation to any of the places before mentioned, from and after the first day of January next, shall be made by the miller or manufacturer thereof merchantable, and of due fineness. All flour casks brought for exportation to any of the places before mentioned from and after the first day of April next, shall be well made of good seasoned materials, tightened with ten hoops, sufficiently nailed or pinned with four nails or pins in each chime hoop, and three nails or pins in each bilge hoop. The flour barrels shall be of the following dimensions, to wit: the staves shall be twenty-seven inches long, and the head seventeen and one half inches in diameter. Every miller of flour for sale or exportation, shall mark with a tiercing or branding iron upon every cask of flour by him manufactured, the tare and nett weight thereof, and shall likewise brand thereon his own name, before the same shall be removed from the place where the same was boulded, under the penalty of two shillings for every barrel of flour not hooped and nailed or pinned as aforesaid, and for every barrel of flour not marked and branded as aforesaid, two shillings, to be recovered from such miller as shall neglect to comply with the directions of this act, in that respect, or from the persons who bring such flour to any of the places aforesaid for sale, or exportation, in case the penalty aforesaid be recovered from the person bringing the said flour for sale or exportation, such person shall and may recover the same from the miller or boulder from whom the said flour was purchased or received; provided it appears that he gave notice to such miller or

1795

How removed.

Flour to be merchantable and fine.

Casks how to be made.

Their dimensions.

Miller to mark the weight and his name on the cask.

Penalty for failure.

From whom receivable.

1795.	boulter that he intended to carry the same to one of the places before mentioned, for sale or exportation, and that he requested the said miller or boulter to secure and mark the said barrels. Every miller and boulter shall
Quantity in each cask.	put into each cask the full quantity of one hundred and ninety-six pounds of flour and no more ; and if any one of them shall put a smaller quantity into any cask than is hereby directed, he shall forfeit for the deficiency of every
Penalty for deficiency.	pound under three, six pence, and for the deficiency of every pound more than three, one shilling ; and the
To unpack the cask.	inspector or his assistants at the request of the purchaser shall, and he is hereby required to unpack any cask of
If deficient miller to pay costs of opening &c.	flour, and if there shall be a lesser quantity of flour than is above directed, or if the cask shall be found to weigh
Every cask to be inspected.	more than is marked thereon, the miller and boulter shall pay the charges of unpacking and repacking over and above the penalties above mentioned where the quantity of flour shall be found deficient, and of six shillings when the cask is found to weigh more than is marked thereon ; but otherwise the said charges shall be paid by the purchaser. Every cask of flour brought to any of the places before mentioned to be from thence laden for exportation, shall be submitted to the view and examination of the inspector at such place, who shall inspect and try the
How inspected.	same, by boring through the head with an instrument not exceeding one half inch in diameter, to be by him provided for that purpose, and if he shall judge that the same is well packed, and merchantable according to the directions of this act, he shall plug up the hole and brand
If merchantable to be branded.	the cask in the quarter with the name of the place where he is inspector, with a public branding iron, to be provided for that purpose, and shall also brand or mark the degree of fineness which he shall on inspection judge the said flour to be of ; which degree shall be distinguished as follows, to wit, <i>Superfine</i> and <i>Fine</i> ; for which trouble the inspector shall have and receive from the owner of such flour, the sum of four pence, and no more ; and no inspector shall pass any flour which shall prove on examination to be unmerchantable, according to the true intent and meaning of this act, but shall cause the same to be marked on the bilge with the word "Condemned."
Inspection fee.	And the inspector shall receive from the owner or owners thereof, the same rate and price as if the same had been passed ; and every inspector of flour shall deliver
Unmerchantable marked 'condemned' Owner to receive certificate	

IV. YEAR OF THE COMMONWEALTH.

338

to the owner of any flour by him inspected and passed, a certificate thereof expressing therein the tare, nett weight, and quality of each barrel, with the name of the owner thereof, and the day on which it was inspected, and shall likewise enter in a book to be by him provided for that purpose, every barrel of flour by him inspected and passed, with the same particulars hereby required to be expressed in the certificates before mentioned. It shall not be lawful for any person to lade on board of any vessel for exportation out of this state, any cask of flour marked "Condemned" by any inspector, or to export or lade on board of any vessel for exportation from any place within this state, any cask or barrel of flour not inspected or marked and branded as aforesaid, under the pain of forfeiting every such cask or barrel of flour so laden. If any person shall alter the brand or mark stamped or made upon any cask of flour by an inspector, or shall mark or brand any cask of flour with a mark or brand similar to, or in imitation of an inspector's mark or brand, or after an inspector shall have passed any cask of flour as merchantable shall pack into such cask any other flour, or after any cask of flour shall be branded "Condemned," shall unpack and repack the same in any other cask or casks for exportation, such person shall forfeit and pay the sum of six dollars for every such cask. Every inspector of flour or hemp, before he enters on the execution of his office, shall make oath or affirmation that he will faithfully and without partiality execute the duty of an inspector of flour or hemp, as the case may be, according to law. If the quantity of flour or hemp brought to any of the before mentioned places for inspection, shall at any time be so great that the inspector cannot alone examine the same with sufficient dispatch, or if through sickness the inspector shall be incapable of discharging the duties of his office, on such occasion it shall be lawful for him to appoint one or more persons of good repute and good judges of the quality of flour and hemp, or either of them, as the case may require, to assist him in the execution of his office, and such assistants having taken the oath or affirmation prescribed by this act to be taken by an inspector of flour or hemp, shall be authorised to inspect any flour or hemp, and mark the same in the same manner as the inspector might do. When any person shall call upon an inspec-

1795.

Inspector to enter flour passed.

Condemned flour not to be exported.

Or flour not inspected.

Under penalty. For counterfeiting, &c.

Inspector's oath

May appoint assistants.

Their oath.

1795.

Deliver flour on
receiving cer-
tificate.

And mark the
same in a book.

Deliver mani-
fest.

Merchantable
hemp.

And how mark-
ed.

Grant certi-
cate to owner.

Deliver hemp
on receipt of
certificate.

Give manifest.

Penalty for ex-
porting unin-
spected hemp.

tor for any flour by him inspected, it shall and may be lawful for the inspector to deliver such flour on receiving certificates for the same, and the said inspector shall mark in a book to be by him provided for that purpose, every barrel of flour so delivered, with the particulars thereof, as stated in the certificates he shall have received, together with the name of the person to whom, and the day on which it was delivered; and shall likewise deliver a manifest thereof to the person receiving the said flour, signed with his name, and specifying the tare, nett weight, and quality of each barrel of flour, the time when inspected, and the name of the person to whom it was delivered.

SEC. 3. *And be it further enacted,* That no hemp shall be considered as merchantable that is not winter or water rotted, dry, bright, clean and strong, and well bound in bundles of at least one hundred and twelve pounds weight. And every inspector of hemp shall examine the hemp that may be brought to him for inspection, and if he shall find it to answer the description above given, he shall mark upon a label to be fastened to each bundle, the name of the owner, the ware-house, number, and the weight thereof, and he shall grant to the owner thereof a certificate of the same, expressing the number, the weight, the name of the owner thereof, and the day on which it may have been inspected; and shall enter the particulars of the certificate in a book to be by him provided for that purpose. And when any person shall call upon an inspector for any hemp, by him inspected, it shall be lawful for him to deliver the same on receiving from such persons certificates thereof, and he shall enter in a book to be by him kept for that purpose, every bundle of hemp so delivered, with the particulars thereof, as stated in the certificates he shall have received, together with the name of the persons to whom, and the day on which it was delivered, and shall likewise give to the person receiving such hemp, a manifest of the same, signed with his name, and specifying the number and weight of each bundle, and the name of the person to whom it was delivered, and the day on which it was inspected. And no person shall export or lade on board of any vessel for exportation, any hemp but what shall have been so inspected and passed, under the penalty of six dollars for every one hundred and twelve pounds

weight. And every inspector of hemp shall receive from the owner thereof, for his trouble, four pence for every one hundred and twelve pounds weight of hemp by him inspected. Every inspector of flour or hemp shall, before he delivers either of the said articles to the owner, receive from him for every barrel of flour, six pence, and for every one hundred and twelve pounds weight of hemp, six pence, for the use of the proprietor of the ware-house at which he is inspector, and shall pay the sums so by him received to the proprietor aforesaid quarterly yearly, to wit: on the first days of January, April, July and October.

1795.

Inspector's fee.

Fee to owner of
ware house.

SEC. 4. *And be it further enacted,* That the court of the county where each of the aforesaid ware-houses shall be situated, shall twice in every year, to wit: in the months of June and October, appoint three of their own body, commissioners to examine the state of the ware-house or ware-houses within their county, the flour and hemp contained in them, and the book of the inspector or inspectors. And the said commissioners shall examine and report to their county court in what manner the said books are kept, the state of the said ware-houses, and whether any flour hath remained within the same more than nine months from the day on which it was inspected; if it shall appear to the court that the ware-house is in want of repair, they shall order the inspector or inspectors to cause the said repairs to be made, and to retain in their own hands the monies arising from the ware-house rents before mentioned, until the amount thereof be sufficient to effect the said repairs. When any flour shall from the report of the commissioners appear to have remained in the ware-house more than nine months from its inspection, the court shall order the inspector to sell the same by public auction, first advertising the same, with the tare, nett weight and quantity of every barrel, the time when and the person for whom it was inspected, for two weeks successively in the Kentucky Gazette. And the said inspector shall dispose of the said flour, and forthwith pay the amount thereof into the treasury, deducting therefrom six per cent. for his trouble, together with the charge of advertising the sale in the Kentucky Gazette as before mentioned, and shall carry to the auditor of public accounts the treasurer's receipt for the money so paid, together with an account of the

Commissioners
to examine the
ware house &c.And report to
county court.Proprietor to
repair ware-
house.Flour remain-
ing in ware-
house more than
9 months to be
sold.And paid into
the treasury.

1795.

Owner may af-
terwards prove
property & re-
ceive amount.

Repealing
clause.

Commence-
ment.

sales certified under his hand, and the auditor shall deliver him a *quietus* for the same. If any person have a right to the flour so sold, for which the money shall have been paid into the treasury, and shall prove his property therein, the auditor shall grant him a warrant for the sum which the treasurer may have received on account of the sales of such flour, and the treasurer shall pay the amount out of any public monies in his hands. All and every act or acts which come within the purview of this act shall be and the same are hereby repealed.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCVIII.

An ACT supplemental to the act entitled "an act to establish District Courts in this Commonwealth."

Approved, December 21, 1795.

See the prelection on chap. 201. The taxation of attornies' fees in the circuit courts depends on this act.

Judges to meet
and for what.

Criminal jurif-
diction vested
in the Franklin
district.

Fees to attor-
nies.

THE judges of the said courts shall all meet at the state-house in Frankfort on the fourth Monday in January next, and shall then and there determine which of them shall hold courts in the different districts. All criminals shall be tried in the Franklin district, until altered by the legislature at the state-house at Frankfort; all the criminal jurisdiction shall be vested in the said Franklin district court, which shall extend to all criminal cases, except the trials of presentments for the breach of the penal laws. The other district courts shall have no criminal jurisdiction; and the fees to be taxed in the bill of costs for an attorney in actions at common law, shall be the same that are allowed in the courts of quarter sessions, and for suits in chancery the same that are allowed in the court of appeals.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCIX.

An ACT concerning the killing of Wolves.

Approved, December 21, 1795.

Preamble.

WHEREAS doubts have arisen whether the act entitled "an act giving a reward for killing of wolves" is now in force, and it is represented to the present general

IV. YEAR OF THE COMMONWEALTH.

337

assembly that encouraging the killing of wolves in this state would be of public utility :

1795.

SECTION 1. *BE it therefore enacted by the general assembly*, That the above recited act shall be and the same is hereby repealed. Former law repealed.

SEC. 2. *And be it further enacted*, That every person who shall kill or destroy any wolf in any county in this state shall receive three shillings for every wolf he shall kill or destroy, not exceeding six months old, to be adjudged of by the justice before whom the head shall be taken ; and for every wolf above the age of six months, eight shillings ; the money shall be levied and paid by the county where such wolf or wolves shall be killed, and the several county courts are hereby directed to levy and pay the person or persons entitled thereto, upon their producing a certificate obtained in the manner hereinafter directed. Reward to Killer.

SEC. 3. *And be it further enacted*, That every person claiming such reward shall produce the head to a justice of the peace of the county where such wolf was killed, and the justice shall administer to such person the following oath, viz. " I A. B. do swear (or affirm, as the case may be) that the head or heads now produced by me, is the head or heads of a wolf or wolves killed by me in the county, and that I did not take the said wolf or wolves in any other county and bring into this with a design of avoiding the act entitled "an act concerning the killing of wolves," either directly or indirectly, and that I have not wittingly or willingly spared the life of any bitch wolf in my power to kill, with a design of increasing the breed, so help me God." But if any wolf-killer shall be under the age of fourteen years, a servant or slave, the said oath shall not be administered, but a justice shall admit such proof or circumstance as shall seem to him convincing : and every justice of the peace before whom such head shall be produced is hereby empowered to administer the aforesaid oaths or take such proof, as the case may be, and thereupon grant to the killer a certificate reciting his name, the number of the heads, and whether they be under or over the age of six months, and the time and place they were killed ; which certificate being produced to the court laying the county levy, such court shall provide for the payment thereof, and direct the sheriff to pay the reward aforesaid to such killer. How paid.

Killer to produce the head.

Take oath. Form.

If the killer is an infant, servant or slave.

1795. *SEC. 4. And be it further enacted,* That any justice
 Destroy heads. having heads brought before him, shall have them burn-
 ed or destroyed in his presence. Every act and part of
 acts that come within the purview of this act shall be and
 the same are hereby repealed.

Commence-
 ment. This act shall commence and be in force from and after
 the passage thereof.

The foregoing, and all other acts and parts of acts relating to the killing
 of wolves was repealed by an act passed February 1, 1809.

CHAPTER CCX.

An ACT for transcribing certain Entry Books.

Approved December 21, 1795.

Preamble.

WHEREAS it is represented to the general assembly
 that the old books containing entries made with the com-
 missioners and surveyors of Kentucky, Lincoln and
 Fayette counties, previous to the division of the said
 counties, are so defaced that there is difficulty in mak-
 ing out correct copies therefrom, and whereas it appears
 that the old books containing the entries made with the
 surveyor of Kentucky county, are in the possession of the
 surveyor of Jefferson county, and the commissioners'
 books are in the possession of the clerk of the court of
 appeals, and it appears unreasonable that the whole ex-
 pence of preserving these entries should be defrayed by
 the counties of Lincoln, Fayette and Jefferson ; for re-
 medy whereof,

Books to be co- pied, by whom and when.

SECTION 1. *Be it enacted by the general assembly,*
 That the surveyors of Lincoln, Fayette, and Jefferson
 counties, and the clerk of the court of appeals shall cause
 to be transcribed in a fair and legible hand, in well bound
 books, by them to be furnished for that purpose, within
 eight months from the passage of this act, all the books
 containing entries made in the surveyor's office of the re-
 spective counties of Jefferson, Lincoln, and Fayette,
 previous to the division of the said counties, and all en-
 tries made with the commissioners for settling land
 claims ; they shall carefully examine the transcript so
 made, and shall certify the same to be true, and shall pre-
 sent them, together with the old books of entries, to the
 courts of their respective counties for their examination,
 on some court day within ten months from the passage
 hereof ; and the said courts shall be empowered to give
 a certificate or certificates which shall be signed by their

Duties of coun- ty courts.

clerks in favor of such surveyors and clerk of the court of appeals for so much money as they in their judgment shall deem an adequate compensation for all trouble and expence by them in this behalf incurred; and the auditor, on receipt of such certificate or certificates, shall debit the same and issue a warrant for the amount thereof on the treasurer, and the treasurer is hereby directed to pay the same.

1795

Allowance for copying.

SEC. 2. *Provided, and be it further enacted,* That the allowance to be made for copying the said entry books and other expences shall not exceed two pence for each entry so copied from the surveyor's books, and three pence for each entry from the commissioner's books. *And, provided,* the said original books when so copied, shall be carefully laid up by the surveyors and clerk of the court of appeals in their respective offices, and the copies so taken shall be used, and copies therefrom certified by the surveyors and clerk of the court of appeals respectively, shall be admitted as evidence in the same manner as copies from the originals would be.

Provido.

Copies admitted as evidence.

SEC. 3. *And be it further enacted,* That the surveyors of the respective counties and the clerk of the court of appeals shall, before they proceed to transcribe, present the whole of the said entry books before the county courts of their respective counties; and if in the opinion of the court, any of the books shall appear well bound and not defaced, they shall direct the surveyor or clerk not to transcribe such of the aforesaid books; and if it shall hereafter appear that any of the surveyors or clerk aforesaid shall fail or refuse to comply with the requisitions of this act, the persons so failing or refusing, shall forfeit and pay the sum of one hundred pounds, to be recovered with costs on ten days notice, and motion in any county court or superior court of original jurisdiction within this commonwealth, one half to the prosecutor and the other half to the commonwealth.

Books examined before copied.

Penalty for failing to copy books.

How recovered.

SEC. 4. *And be it further enacted,* That the governor shall appoint a proper person to apply to the surveyor of Montgomery county, in the state of Virginia, to enter in a well bound book to be provided for that purpose, by the person aforesaid, copies of all plats and certificates of old military surveys in this state, from the records in his office, and of all the old military warrants recorded in his office, and to certify the same under his hand; the

To copy military surveys.

1795.

To be lodged
with the regis-
ter.Fees for copy-
ing.Register to ac-
count for part.Allowance for
copying how
paid.Commence-
ment.

said copies shall be deposited in the register's office, and any copy taken therefrom, and certified to be just by the register, shall be admitted as evidence in any court of justice within this state. Any person applying for a copy of any plat and certificate, or of any military warrant copied and deposited as aforesaid, shall pay to the register for such copy, double the sum which shall be paid for the same to the surveyor of the county of Montgomery. The register shall account annually with the auditor of public accounts for the one half of the fees received for such copies, and pay the same into the public treasury. The governor shall grant to the person employed to procure the copies above mentioned a certificate for a sum sufficient to pay the expences of the same, and the treasurer is hereby directed to pay the same out of any public money in his hands, on receiving the auditor's warrant for the amount.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXI.

An ACT giving further time to the owners of lots in Greensburg to improve the same, and for other purposes.

Approved December 31, 1795.

Preamble.

WHEREAS the time given to the owners of lots in Greensburg to improve the same, will shortly expire, and it is judged expedient to prolong the same :

Time allowed
to improve lots,

SECTION 1. *BE it enacted by the general assembly,* That the further time of one year from and after the expiration of the time allowed by law for improving the said lots, be allowed to make the requisite improvements thereon, and during which time no forfeiture shall accrue for want of such improvement.

Additional trus-
tee to Port-
William.

SEC. 2. *And be it further enacted,* That Simon Adams, Richard Masterson, John Van Pelt, and William Haden, gentlemen, be and they are hereby appointed trustees to the town of Port-William, in addition to those formerly appointed by law.

To Winchester

SEC. 3. *And be it further enacted,* That John Martin, Robert Higgins, Robert M'Kenny, Richard Jones, John Landers, James Stephens and John Ireland, be appointed trustees to the town of Winchester, in addition to those formerly appointed by law.

IV. YEAR OF THE COMMONWEALTH.

341

SEC. 4. *And be it further enacted,* That the further time of twelve months from the passage of this act, be allowed all persons having commenced building on their respective lots in the town of Boonsborough to complete the same agreeably to law, in which time no forfeiture shall accrue to the holders thereof.

1795.

Further time
to improve lots
in Boonsborough.

SEC. 5. *And be it further enacted,* That whoever shall erect any nuisance within the limits of the town of Danville, or shall cause any obstructions in the streets or highways of the same, shall forfeit and pay the sum of three dollars, provided that such obstruction or nuisance is not removed within twenty-four hours after notice being given thereof. Whosoever shall be guilty of running or racing horses in the streets or highways, or shooting at marks within the limits of said town of Danville, shall forfeit and pay the sum of one dollar; which forfeitures shall be collected in the name of the trustees of the said town, and may be recovered in the manner sums of the like amount are recoverable by law, and shall be applied to the use and benefit of the said town by the trustees thereof.

Penalty on nuisances in Danville.

For racing.

How collected.

SEC. 6. *And be it further enacted,* That Isham Burks, James Young and John Chisom, gentlemen, be added to the present trustees of Greensburg, and shall be vested with the same powers that have been heretofore given by law to the present trustees of said town.

Trustees for Greensburg.

This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER CCXII.

An ACT for establishing a Town on the lands of Archibald Kennedy, in the County of Greene.

Approved December 21, 1795.

WHEREAS it is represented to the general assembly, that one hundred acres of land, the property of Archibald Kennedy, in the county of Greene, has been laid off into convenient lots and streets for the purpose of a town, and known by the name of Kennedysville, and it is judged expedient to vest the same in trustees and establish a town:

Preamble.

SEC. 1. *Be it therefore enacted by the general assembly,* That the said one hundred acres of land shall be ves-

Land vested in trustees.

1795	ted in Thomas Hall, Joshua Armstrong, Thomas Morris, Martin Frazier, John Thurman, James Spilman, Adam Mitchel and Samuel Duncan, gentlemen, for the
Town established.	purpose of a town, and known by the name of Kennedysville ; and the said trustees, or a majority of them, shall
Name.	proceed to sell the lots that remain unsold for the best
Lots to be sold.	price that can be got for ready money or credit, as the proprietor shall direct, having previously advertised the
Erect buildings thereon.	time and place at the door of the court-house of the county, at least two months ; the purchasers of lots in
	said town shall within three years from the time of purchase, build a dwelling house at least sixteen feet square,
	with a brick or stone chimney ; and on failure thereof, the lots shall be forfeited, and shall be sold by the trustees
Powers of the trustees.	for the best price that can be had, and the money applied to the use and benefit of the said town : the said
	trustees, or a majority of them, shall have power to make rules for the regular building on lots in said town, and to
Fill vacancies.	determine all disputes respecting the limits of the same : they shall have power to supply vacancies in case of
	death, resignation or inability to act : and the owners of lots in said town shall be entitled to all the rights, privileges,
	and immunities which the inhabitants of other towns in this state possess and enjoy.
Rights reserved.	SEC. 2. <i>And be it further enacted</i> , That all settlers or purchasers who by contracts with the said Kennedy, or
	other person duly authorized, are entitled to lots, shall not be affected by this act, but their claim to lots shall
Time to improve prolonged.	remain as valid as if this act had never been made ; and the time of three years shall be given those who have
	purchased lots prior to the passage of this act to erect the necessary buildings on their lots, to save them from forfeiture.
To convey lots	SEC. 3. <i>And be it further enacted</i> , That the said trustees shall have power to convey lots in fee simple to settlers
	and purchasers who may be entitled to the same, and shall pay the money arising from the sale of lots made
	by them, or assign the bonds taken by them for the purchase money of lots to the proprietor or his order.
Rights saved.	SEC. 4. <i>And be it further enacted</i> , That nothing herein contained shall be so construed as to prevent any persons
	who may have a more legal or equitable right than the said Kennedy to the land aforesaid, vested in the trustees, from recovering the money arising from the

IV. YEAR OF THE COMMONWEALTH.

343

sales of said lots, from the persons who may have received the same.

This act shall commence and be in force from and after the passage thereof.

1795.

Commencement.

CHAPTER CCXIII.

An ACT to amend an act entitled "an act for opening the navigation of the South and Stoner's fork of Licking."

Approved December 21, 1795.

By this act certain commissioners were appointed to raise by way of lottery the sum of five thousand dollars, to be applied to the purpose of removing all obstructions to the navigation of the south fork of Licking.

CHAPTER CCXIV.

An ACT to amend an act entitled "An act for the better regulating the town of Lexington."

Approved December 21, 1795.

SEC. 1. *Be it enacted*, That from and after the first day of March next, it shall not be lawful for any person or persons residing within the bounds of the in and out lots of the town of Lexington, owners of any swine, to suffer the same to go at large within the said bounds: and if any swine belonging to any person within the said bounds, shall be found running or going at large within the same, it shall be lawful for any person whatever to kill and destroy every such swine so running at large.

Swine prohibited from running at large.

Provided always, that the provisions in this act contained,

Proviso.

shall not extend to persons driving swine from one plantation to another, through the said town and bounds aforesaid, or in order to sell the same. The trustees of

the said town or their successors, shall have power to appoint a clerk of the market, and to enact such bye laws

Appoint clerk to the market.
Make bye laws

and ordinances for the regulation of the said market, as they may think proper, provided they are not contrary to the laws and constitution of this commonwealth, and to affix a penalty for a breach of any of the bye-laws, not exceeding the sum of ten dollars, to be recovered at the suit of the trustees aforesaid, in the same manner as sums of the like amount are now recoverable by law. *Provided always*, that before any bye-laws or ordinances enact-

How promulgated.

1795. *ed by the trustees of the said town by virtue of this act, or the power before vested in them by law shall have any operation it shall be advertised for four weeks successively in the Kentucky Gazette and Kentucky Herald. The standard of weights and measures shall be the same as it now is by the laws of Virginia, unless altered by the laws of the United States. And if any person in the market-house of the said town, shall sell or offer to sell any article by weight or measure, below the standard, it shall be lawful for the clerk of the market to seize the article so sold or offered for sale, and to sell the same ; and the said clerk shall account for the amount of the sale to the trustees, whose duty it shall be to apply the same to the repairing the streets and highways of the said town.*

Standard of weights & measures. Penalty for selling contrary thereto.

How appropriated.

Appoint watchmen.

Their duty.

Expence of watch how defrayed.

SEC. 2. *And be it further enacted, That it shall and may be lawful for the said trustees to employ such number of watchmen at such reasonable wages as shall be found necessary and proper, and that they shall have full power and authority to ascertain and prescribe the stands and rounds of the said watchmen in and through the streets and highways of the said town, to engage them for such length of time as shall be found expedient, and in case of misbehaviour, inability or neglect, to discharge them and appoint others in their stead ; and the said watchmen respectively shall use their best endeavors to prevent fires, murders, burglaries, robberies, and other outrages and disorders within the bounds of the in and out lots of the said town : they shall visit all negro quarters and other places suspected of entertaining unlawful assemblies of slaves or other disorderly persons, and they are hereby empowered and required to arrest and apprehend them. And all such suspicious persons who shall be found wandering or misbehaving themselves within the bounds aforesaid ; and shall take the person or persons so apprehended, as soon as conveniently may be, before some justice of the peace of the county of Fayette, to be examined and dealt with according to law. And in order to defray the expence of such watch, it shall and may be lawful for the trustees to raise, in addition to the sum now allowed to be raised, the annual sum of fifty pounds by a tax on the real and personal property and titheables within the bounds aforesaid.*

IV. YEAR OF THE COMMONWEALTH.

345

SEC. 3. The jurisdiction of the trustees over the streets and highways shall extend no further than the bounds of out lots; beyond those bounds shall be as heretofore, under the direction of the surveyors appointed by the county court. And the titheables of the said town shall be compellable to work on such parts of the road as lie between the bounds of the out lots and the end of one mile from the court-house.

1795

Jurisdiction of trustees.

SEC. 4. *Be it further enacted*, That as far as this act concerns swine in the town of Lexington, it shall be extended to the town of Washington, in Mason county.

This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER CCXV.

An ACT concerning the Trustees of the Transylvania Seminary.

Approved November 21, 1795.

BE it enacted by the general assembly, That the trustees of the Transylvania Seminary be hereby suspended from any further proceeding in the execution of the trust reposed in them until the end of the present general assembly.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXVI.

An ACT concerning the Transylvania Seminary.

Approved December 21, 1795.

WHEREAS it is represented to this present general assembly that doubts have arisen whether the act entitled "an act concerning the trustees of the Transylvania Seminary," passed the third day of December, in the year 1790, has repealed so much of the act entitled "an act to amend an act entitled an act to vest certain escheated lands in the county of Kentucky, in trustees for a public school," as provides that in fixing upon the place for establishing the seminary, forming the constitution thereof, electing the president and professors, as ascertaining their salaries, as also in the disposal of any lands

Preamble.

NOVEMBER SESSION,

1795. belonging thereto, that thirteen members should concur in opinion thereupon: for remedy whereof,

Number of members to form a board. *Be it enacted*, That from and after the passing of this act, seven members shall be sufficient to constitute a board to transact business, not only at the two annual stated meetings as fixed by law, but also at any called or adjourned meeting. *Provided always*, that in the election of a trustee, in fixing on the place for establishing the seminary, forming the constitution thereof, electing the president and professors, and ascertaining their salaries, and also in the disposal of any lands belonging thereto, thirteen members shall concur in opinion thereupon. The district court, in the district where the board of trustees shall sit, shall have power to superintend and control proceedings of the said board, and for that purpose may issue a *certiorari* to cause the books and papers of the said board to be brought before them; and it shall be lawful for the said court, upon inspection of said books and papers, to make such order in the premises as to them shall seem just and right. And the same court shall have power to issue writs of *mandamus* and prohibition to the said board according to law.

Proviso,

To be under the control of the district courts.

Commencement. This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXVII.

An ACT authorising the Governor to transmit certain Papers to the Secretary of War, and for other purposes.

Approved December 21, 1795.

Preamble. WHEREAS it became necessary at different periods during the years one thousand seven hundred and ninety-two, one thousand seven hundred and ninety-three and one thousand seven hundred and ninety-four, when no provision was made by the general government for the defence of the frontiers of this state, that bodies of militia should be ordered out for that purpose, and this state has thereby incurred an expence which ought to be reimbursed by the government of the United States; therefore,

Governor to forward papers, for what. *Be it enacted by the general assembly*, That the governor be and he is hereby authorised to forward to the se-

IV. YEAR OF THE COMMONWEALTH.

347

cretary of war copies of all the accounts and documents that may be necessary to ascertain the amount of the claim of this state against the United States for expences incurred in defence of its frontiers, as before mentioned, together with the proper vouchers to support the said claim, and to take such other steps as may to him appear most proper to procure a reimbursement of the expences aforesaid from the government of the United States. And the governor is further authorised to employ a clerk to make out such copies of the accounts, documents and vouchers before mentioned as may be requisite: and to certify to the auditor of public accounts the time during which the said clerk shall have been so employed, and the auditor shall thereupon issue a warrant to the treasurer for his salary, at the rate of five pounds per month.

1795.

This act shall commence and be in force from and after the passage thereof.

Commence-
ment.

CHAPTER CCXVIII.

An ACT to establish a Town in Shelby County, and Ferries across the Ohio and Kentucky Rivers.

Approved December 21, 1795.

SECTION 1. *BE it enacted by the general assembly,* That the lots and streets as the same are already laid off, on the lands of John Smith and Francis Preston, which are bounded by the Kentucky, the Ohio, and little Kentucky rivers, shall be and are hereby established a town by the name of Preston, and that a plan thereof shall be recorded in the clerk's office in the county of Shelby.

Town estab-
lished.

Name.

SEC. 2. *And be it further enacted,* That John Smith, George Madison, William Trigg and Abraham Cavens, gentlemen, are constituted and appointed trustees thereof. The said trustees, or any two of them, shall have full power and authority to convey in fee simple, any lots that have or may hereafter be sold by the said John Smith and Francis Preston to the respective purchasers thereof, according to the times of such sale. The said trustees, or a majority of them, shall have full power to settle and determine all disputes about the limits and boundaries of said lots and streets. In case of death, resignation or other legal disability of any one or more of the said trustees, the vacancies thereby occasioned

Trustees ap-
pointed.

Their powers,

Vacancies how
filled.

1795.	shall be supplied by the remaining trustees, or a majority of them; and the persons so elected shall have the same power and authority as if they had been particularly named in this act. <i>Provided always</i> , that this act shall not be construed so as to affect the right, claim or interest of any person or persons whatsoever, other than the said John Smith and Francis Preston.
Rights saved.	
Ferries established.	SEC. 3. <i>And be it further enacted by the authority aforesaid</i> , That there shall be constantly kept public ferries from the land of the said John Smith and Francis Preston across the Ohio river to the opposite shore, also across the Kentucky river to the town of Port-William; the ferry-keeper on the Kentucky river may demand and take the following rates, that is to say, for a man, four pence; for a horse, four pence; for every four wheel carriage, three shillings; for every two wheel carriage, one shilling and six pence; for every head of neat cattle, three pence. And the ferry-keeper on the Ohio, may demand and take the following rates, for a man, eight pence; for a horse eight pence; for every four wheel carriage, six shillings; for every two wheel carriage, three shillings; for every head of neat cattle, six pence. If the aforesaid ferry-keepers shall demand any greater rates than are hereby allowed, he shall for every such offence forfeit and pay to the party aggrieved the ferriages demanded and five dollars, to be recovered with costs, before a justice of the peace of the county where the offence shall be committed.
Rates of ferriage.	
Penalty for demanding higher rates.	
Commencement.	This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXIX.

An ACT concerning the boundary line between this state and the state of Virginia.

Approved December 21, 1795.

See an act passed in 1799, (Vol. II. Chap. 187.)

Preamble.

WHEREAS it is represented to the present general assembly, that several persons from the state of Virginia, have made encroachments on the territory of this state, by entering thereon land warrants issued by the register of that state; and it is necessary that the line between this state and the state of Virginia should be es-

IV. YEAR OF THE COMMONWEALTH.

349

established, so as to prevent any doubts in future respecting said line. Therefore,

1795.

SECTION 1. *BE it enacted by the general assembly,* That the governor of this state be, and he is hereby directed to open a correspondence with the governor of the state of Virginia relative to the said boundary line, and to appoint three commissioners, if to him it may appear necessary, or do whatever else may appear most proper for the permanent establishment of the said line, so as to prevent any doubts in future respecting it.

SEC. 2. *And be it further enacted,* That James Thompson and William Croghan, be appointed to ascertain the head of Green river, and then to run the north east line of the military lands.

CHAPTER CCXX.

An ACT for the relief of the Settlers on the south side of Green river.

Approved December 21, 1795.

This act is the stock of an interesting branch of our statute law. In 1797 an act was passed for encouraging and granting relief to settlers, (Chap. 315)—at the January session of 1798, an act was passed to amend and revive the act entitled an act for encouraging and granting relief to settlers, which repealed the act of 1797, (Vol. II. Chap. 55)—at the same session an act was passed to prevent illegal surveys on the south side of Green river, (Vol. II. Chap. 61)—at the November session 1798, an act was passed allowing the settlers on the south side of Green river to pay the money due the state in equal annual instalments, and for other purposes, (Vol. II. Chap. 175)—This was amended by one passed in 1799, (Vol. II. Chap. 183)—and eleven days after, an act was passed supplemental to the amendatory act, (Vol. II. Chap. 219)—and on the same day an act to prevent the location of lands actually settled, (Vol. II. Chap. 225)—In 1800 another act was passed granting relief to settlers south of Green river, (Vol. II. Chap. 279,) and nine days afterwards an act supplemental thereto, (Vol. II. Chap. 311)—at the same session an act was passed for improving the vacant lands of this commonwealth, (Vol. II. Chap. 312,) which was amended by an act passed in 1801, (Vol. II. Chap. 368)—In 1802 an act was passed for the relief of settlers of this commonwealth in certain cases, (Vol. II. Chap. 36)—In 1803 an act was passed giving further indulgence to the settlers on vacant lands in this state to discharge the debt due the state on their late head rights and for other purposes, (Vol. III. Chap. 105)—In 1804 an act was passed concerning settlement rights south of Green river, (Vol. III. Chap. 217)—In 1805 an act was passed to procure a statement of the monies due to this commonwealth for the sale of her lands and for other purposes, (Vol. III. Chap. 313)—In 1806 an act was passed extending the time of obtaining certificates for vacant land in certain cases, (Vol. III. Chap. 373)—at the same session an act was passed for the relief of settlers in certain cases, (Vol. III. Chap. 404) and an act for the payment of the debt due to this commonwealth for the sale of vacant lands, (Vol. III. Chap. 392.) *Vide also* Chap. 421 and 482 of Vol. III. in acts of 1807.

1795.

Preamble.

WHEREAS a number of people have settled themselves on the vacant land south of Green river, under a belief that they were no longer liable to be taken by military warrants, and that the legislature would grant them settlements therefor, on paying a moderate price for the same ; and it is therefore thought proper to pass an act for that purpose. Therefore,

Certain persons
entitled to a settle-
ment.

Where.

The quantity
of land.

Not to include
a salt lick or
body of ore.
When to make
an entry there-
of.

Commissioners
to be appointed
Their power.

Where to sit &
when.

When the
claim must be
laid in & prov-
ed.

To be special-
ly located.

SECTION 1. *BE it enacted by the General Assembly,* That every house keeper or other free person above the age of twenty-one years, who shall have actually settled himself or herself on any land within that boundary, set apart for the said officers and soldiers on the south side of Green river, or any other vacant land within this state, which shall not have been previously taken by a military warrant, on or before the first day of January next, and shall actually reside thereon at that time, shall be entitled to hold any quantity of such land not exceeding two hundred acres including such settlement. *Provided,* they shall not include any salt lick, or any body of ore: that he or she shall on or before the first day of August next, make an entry thereof in the office of the surveyor of the county where the land lies, and pay for the same according to the directions and provisions of this act. And for the purpose of ascertaining who shall be entitled to land under this act,

SEC. 2. *Be it further enacted,* That three persons shall be appointed who shall have power and authority to hear and determine the right of settlements under this act, at a court to be by them held at a court house in the counties of Logan and Green, on the first day of June and July, and then continue by adjournment for the term of fifteen days at each place, if the business should require it ; any person claiming a settlement right under this act shall before the said fifteenth day of July, lay in the same before the commissioners and have their or his witnesses ready to support his or her claim, and if the said court shall be of opinion that the said claimant under this act is entitled to the same, they shall cause it to be located, specially describing the boundaries, and certify the same to the surveyor of the county where the lands lie, who shall make an entry of the same in a well bound book kept for that purpose, and shall thereupon file away the certificate as his voucher, which shall accompany the

IV. YEAR OF THE COMMONWEALTH.

351

survey of the land to the register's office to be by him safely kept.

1795.

SEC. 3. *And be it further enacted*, That the said court shall have power to compel the attendance of witnesses, to administer the necessary oaths, and to examine them touching any thing material to the matter in question. The sheriffs of Logan and Greene shall attend the said court by himself or deputy, and perform to them all the necessary duties of his office ; and he shall be entitled to receive the usual fees for any services he may perform, to be paid by the party requiring the same, and in the usual way, exclusive of six shillings per day, which he shall be entitled to receive for his attendance on said court, to be paid out of the public treasury, on a certificate of his attendance signed by the said court, and audited, if there should be as much money in the treasury arising from fees paid on certificates, and not otherwise.

Further powers of the commissioners.

What sheriffs to attend them.

Allowance to sheriffs.

SEC. 4. *And be it further enacted*, That the said court shall have power during the term aforesaid, to hear and determine all disputes between settlers who claim under this act ; and their decision shall be final and without appeal.

Judgment of the commissioners to be final.

SEC. 5. *And be it further enacted*, That in case of a contest respecting the right of settlers under this act, the person who made the first improvement shall be preferred, and no person shall obtain a certificate for more than one improvement.

In disputes between settlers which to be preferred.

SEC. 6. *And be it further enacted*, That in surveying the said settlement tract, it shall not exceed in its longest part twice the width of its narrowest part, unless it shall be restrained on the opposite sides by the lines of prior rights.

Survey how to be proportioned

SEC. 7. *And be it further enacted*, That the lands located by virtue of this act, shall be surveyed within six months from the said first day of August, and a platt and certificate thereof lodged in the register's office, within the space of six months from the date of such survey, upon which the register shall issue a grant for the usual fees ; provided that the owner of every such survey shall pay the sum of thirty dollars for every hundred acres, and the same rate for every greater or lesser quantity contained in his said survey ; the money aforesaid shall be paid to the treasurer, and his receipt for the same, specifying therein for what it was paid, shall be by the party

Settlements when to be surveyed and registered.

Consideration money.

1795. lodged with the register, after which the grant shall issue, and not before.
- Land to revert to the state if the money is not paid. SEC. 8. *And be it further enacted*, That if the survey claimed by virtue of this act, be not lodged with the register, and the money due on such survey be not paid on or before the first day of November, in the year 1796, then the said survey shall revert to the state.
- Commissioners by whom appointed. Their allowance. SEC. 9. *And be it further enacted*, That the governor shall appoint the said commissioners, who shall be allowed the sum of twelve shillings per day for every day they shall sit to do business, and in travelling to and from the place of holding their court; and for the purpose of paying them and their clerk to be appointed by them, who shall receive twelve shillings per day, there shall be paid down the sum of three shillings upon any certificate of a settlement allowed; and should there be any money remaining in the hands of the clerk, after retaining at the rate of twelve shillings per day for his own services, and paying each commissioner twelve shillings for his services, he shall pay the same in the public treasury, and take the treasurer's receipt therefor, and shall lodge the same with the auditor.
- To appoint a clerk and his allowance. Tax on certificates. SEC. 10. *And be it further enacted*, That the said commissioners at the end of the term aforesaid, shall sign their proceedings and cause a copy of them to be lodged with the register. The aforesaid commissioners shall have power to award costs on the decision of a contest as to them shall seem right.
- How appropriated. Copy of the proceedings to be lodged with the register. May award costs. SEC. 11. *And be it further enacted*, That no person shall settle on any vacant or unappropriated land within this state in future, with an expectation of being granted the preference of settlement.
- Future settlements on vacant land prohibited. SEC. 12. *And be it further enacted*, That all acts and parts of acts as come within the purview of this act, shall be and the same is hereby repealed.
- Repealing clause. Commencement. This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXXI.

An ACT to amend an act entitled "an act to amend an act establishing County Courts, Courts of Quarter Sessions, and a Court of Oyer and Terminer."

Approved, December 21, 1795.

See the prelection to chapter 23.

SEC. 1. *BE it enacted by the general assembly,* That henceforth when a vacancy may happen in the courts of quarter sessions by death, resignation or otherwise, it shall be lawful for the governor to fill such vacancy by appointing any fit person residing in the county where the vacancy may happen, to fill the same ; whether the person so appointed be one of the justices of the peace or not ; and where any appointments to fill a vacancy in any court of quarter sessions, hath been made contrary to the directions of the above recited act, such appointment shall be valid.

1795.

Fill vacancies
in courts Q. S.

SEC. 2. *And be it further enacted,* That when two or more persons are bound jointly, or jointly and severally in any bond or writing obligatory, and the persons so bound shall reside in different counties, it shall be lawful for the clerk of the court where the suit is brought against one of the obligors, on request of the plaintiff, to issue a *capias ad respondendum* against the other obligor or obligors, directed to the sheriff of the county where they may reside, and the sheriff shall execute and return the same, in the same manner as if the *capias* had issued from the clerk of his county.

Capias ad res-
pondendum to
issue to another
county against
a joint obligor.

SEC. 3. *And be it further enacted,* That the courts of quarter sessions shall have concurrent jurisdiction with the district courts in all matters or things whatsoever, except in the trial of criminals.

Concurrent ju-
risdiction.

SEC. 4. *And be it further enacted,* That deeds, powers of attorney, and other writings, may be admitted to record in the clerk's office of the court of appeals, he taking the acknowledgment or proof, in the same manner as if it was done in open court.

Clerk may re-
cord acknow-
ledgement.

CHAPTER CCXXII.

An act concerning the Governor, Auditor, Treasurer and Secretary.

Approved December 27, 1795.

SECTION 1. *BE it enacted by the general assembly,* That the auditor, treasurer and secretary, shall reside at, and keep their offices in Frankfort, from and after the first day of April next. And there shall be allowed to the auditor, in addition to his present salary, the sum of

1795.

eighty pounds, and to the treasurer the sum of eighty pounds, any law to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That the governor who shall be next elected in this state, shall be allowed in addition to the present salary, the sum of one hundred pounds, and shall reside in the town of Frankfort, from and after the first day of September next.

SEC. 3. *And be it further enacted*, That the directors of the public buildings be empowered, and they are hereby directed to rent, in the said town, the necessary buildings, together with a garden, for the reception of the governor, until the end of the next general assembly; and that the sum of one hundred pounds be appropriated for the purpose of procuring the said buildings; and that the auditor on receiving the commissioners' certificate, do issue his warrant on the treasury accordingly.

CHAPTER CCXXIII.

An act appropriating Money.

This was merely the ordinary appropriation bill, which has had its effect.

CHAPTER CCXXIV.

An act authorising John Hale to convey a certain quantity of land to Elijah Farris.

Approved December 14, 1795.

Joseph Hale the intestate, had sold to Elijah Farris a small tract of land in Mercer by verbal contract—he had received part of the pay in his lifetime, and John Hale the administrator, had received the residue since his decease. This act directed the administrator to make a deed of conveyance.

CHAPTER CCXXV.

An act allowing a certain Guard on the wilderness road additional pay.

Obsolete.

CHAPTER CCXXVI.

An act apportioning the Representation among the several counties.

Approved December 19, 1795.

This act has had its effect, and become obsolete.

IV. YEAR OF THE COMMONWEALTH.

355

CHAPTER CCXXVII.

1795.

An act for paying Robert Abel a certain sum of money.

He was quarter-master, and "at a very great expence," had furnished rations to a guard on the frontiers in 1793. This act made him an extra allowance of 20 dollars therefor.

CHAPTER CCXXVIII.

An act to appoint trustees to the town of Versailles, in the room of those who have failed to act.

Approved December 15, 1795.

WHEREAS, it is represented to the general assembly, that several of the trustees formerly appointed for the town of Versailles have refused or failed to act, and it is found expedient that there should be others appointed in their stead.

Be it therefore enacted by the general assembly, That John O'Bannon, John Crittenden, William Whittington and John Jimms, are hereby appointed trustees for the town of Versailles, to fill up the vacancies occasioned by the refusal or failure of the former trustees who did not act; which said trustees above nominated, shall possess the same powers and perform the same duties as the trustees heretofore appointed.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXXIX.

An act to compel the receivers, sheriffs, and clerks, to settle their accounts for all certificates or taxes received by them, under the revenue laws of Virginia.

Approved December 21, 1795.

The auditor was directed to call on the persons mentioned in the title for payment, and in case any of them should refuse, to lay a statement of the matter before the next general assembly.

CHAPTER CCXXX.

An act to increase the pay of the members of the general assembly.

Approved December 15, 1795.

This act raised their wages to nine shillings per diem.

NOVEMBER SESSION,

1795.

CHAPTER CCXXXI.

An act to compel each male tithable to kill a certain number of Squirrels or Crows.

Approved December 15, 1795.

Temporary and had its effect.

CHAPTER CCXXXII.

An act giving further time to the owners of lots in the town of Winchester to improve the same.

Approved December 14, 1795.

WHEREAS the time given the owners of lands in the town of Winchester to improve the same, will shortly expire, and it is judged expedient to prolong the same ; Therefore,

Be it enacted by the general assembly, That the further time of two years from and after the passage of this act, shall be allowed to the owners of lots in the said town to build on and improve the same.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXXXIII.

An act for selling part of the lands of which Alexander Reid died seized and possessed.

Approved December 14, 1795.

He had made a nuncupative will, but in so doing had not fully complied with the requisitions of the law. This act directed the county court of Fayette to appoint three commissioners to sell part of his land for the payment of his debts, in relief of his personal property, his children being minors.

CHAPTER CCXXXIV.

An ACT for the benefit of John Protzman.

The possible operation of this act is so extensive that it was thought best to retain it entire.

Preamble.

WHEREAS it is represented to the present general assembly, that a certain Lawrence Protzman having laid off two hundred and fifty acres of land into lots and streets, at the confluence of Stoner and Huston, the same

IV. YEAR OF THE COMMONWEALTH.

357

was established into a town by an act of the Virginia assembly, of the October session one thousand seven hundred and eighty-nine; that a certain John Protzman has since purchased the interest of the said Lawrende, in the said two hundred and fifty acres; that the assembly of Virginia, in their session of one thousand seven hundred and ninety, passed an act entitled "an act to amend the act establishing the town of Hopewell, in the county of Bourbon, and for altering the name of the said town;" that by the said act it is among other things provided, that the trustees therein appointed, after they had completed the said sale thereby directed, shall retain the money arising from such sale for the use and benefit of the person or persons in whom the title to the said two hundred and fifty acres of land shall be thereafter established, to be paid to such person or persons, or their legal representatives accordingly; that an act passed the assembly of this commonwealth authorising the trustees of the said town to convey to John Allen certain lots therein, which he had purchased on his securing to the said trustees the payment of the purchase money, with lawful interest for the same, on the final determination of the title of the said land; and that although a considerable time hath elapsed, no suit has yet been commenced by the said John Allen, or any other person, to determine the title of the said land:

SEC. 1. *Be it therefore enacted by the general assembly,* That so much of the act of assembly of Virginia, of October one thousand seven hundred and ninety, as directs the trustees of the said town to retain the money arising from the sale of the lots therein shall be and the same is hereby repealed.

Acts of Virginia repealed.

SEC. 2. *And be it further enacted,* That the trustees of the said town and their treasurer, shall pay to the said John Protzman, or his lawful attorney, all such sum or sums of money as they or any of them may have in their hands arising from the sale of lots in said town, and shall also assign and transfer and deliver to said John or his attorney, all notes, bonds and other writings which they may have taken in their or any of their names, for the payment of any sum or sums of money for lots in said town, after deducting therefrom all sums of money which they may have expended in laying off the said lots, selling or conveying the same, procuring books and papers,

Pay money arising from the sale of lots.

Assign bonds.

Deduct a certain sum.

1795

1795.
Protzman
give bond.

and the sums which they have allowed their clerk. And the said trustees are hereby authorised to take bond with sufficient security from the said John Protzman, or his legal attorney, payable to them for the use of the rightful proprietor, conditioned for the payment of all such sums of money which they shall pay, and for the amount of such bonds and notes as they may deliver, with interest thereon in case the said John Protzman shall be legally evicted from the said land; which bond shall be lodged with the clerk of the county court of Bourbon, and recorded in his office, and for which the said John shall pay the lawful fee.

Trustees to
make no further
sales.

Convey those
already sold,

Rights saved.

Law repealed.

Commence-
ment.

SEC. 3. *And be it further enacted,* That the said trustees shall not and they are hereby disabled from making any further sales of a lot or lots in the said town; and all and every lot and lots in said town, which shall remain unsold at the passage of this act, shall be vested in the said John Protzman, saving and reserving to the trustees the right of conveying in fee simple all and every lot or lots by them sold before the passage of this act, and to all and every person and persons whatsoever all and every right, title or claim, which they or any of them may have in law or equity in or to the land contained in the same.

SEC. 4. *And be it further enacted,* That the act of assembly of this commonwealth entitled "an act authorising the trustees of the town of Paris to convey to John Allen, by deed in fee simple, certain lots therein contained," shall be and the same is hereby repealed.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXXXV.

An ACT making compensation to William Montgomery, James Laurence and Samuel Davidson, for certain services.

Approved December 17, 1795.

They had been ordered by the governor to go to Cincinnati to apprehend and bring to justice Hugh Rofs, who was charged with felony—They did so, and this act allowed them 30 dollars apiece for so doing.

CHAPTER CCXXXVI.

An ACT for altering the time of holding Quarter Session courts in the county of Nelson, and for other purposes.

The other purpose was directing the court to sit twelve days at their October term. The act has long had its effect.

IV. YEAR OF THE COMMONWEALTH.

359

CHAPTER CCXXXVII.

1795

An act authorising a Lottery.

Approved December 8, 1795.

The sum authorized to be raised by this lottery was 2,250 dollars to be applied to the use of the Lexington lodge of ancient masons, No. 25.

CHAPTER CCXXXVIII.

An act concerning the marriage of Margaret Richeson.

Approved December 17, 1795.

This act authorized her to sue in the county court of any county having cognizance thereof, her husband James Richeson for a divorce, and to obtain it on a jury's finding that he had deserted her and become a Spanish subject.

CHAPTER CCXXXIX

An act for selling the land of which Frederick Moss died seized and possessed.

Approved December 17, 1795.

He died seized of 175 acres of land—he had made a nuncupative will, but it could not be sufficiently proved to authorize his widow and children to sell the land. This act directed the sale to be made by the three oldest sons.

CHAPTER CCXL.

An act authorising Rachael Downing to convey to John Voris a certain tract of land.

Approved December 17, 1795.

She was the widow and administratrix of William Downing, who had died much in debt. She had sold to Voris 100 acres of land, and applied the money to paying her husband's debts. This act authorized her to make a conveyance.

CHAPTER CCXLI.

An ACT to legalise the appointment, and confirm the proceedings of certain Commissioners.

Approved December 15, 1795.

Connected with the subject of revenue. *Vide* the prælection to chap. 10.

WHEREAS by the death of the commissioner of Washington county, the lists of taxable property within the same could not be taken within the time directed by

1795. law, and by the death of the said commissioner the court of the said county was necessitated to appoint another to take in the lists of taxable property within the limits thereof; therefore,

SECTION 1. *BE it enacted by the general assembly,* That the appointment of the commissioner for taking the lists of taxable property by the county court of Washington, is hereby ratified and confirmed; and the proceedings of the said commissioner shall be as valid to all intents and purposes as if the same had been done within the time limited by law; any thing to the contrary notwithstanding.

SEC. 2. *And be it further enacted,* That the appointment and proceedings of the commissioners of the tax for the counties of Franklin and Campbell are hereby legalized and confirmed, and their acts shall be as valid as if they had been appointed specially by law.

CHAPTER CCXLII.

An ACT authorising the Justices of Campbell County to fix on a place for holding Courts in the same.

Approved December 21, 1795.

SECTION 1. *Be it enacted by the general assembly,* That on the first Monday in February next the county court justices, or a majority of them for said county, shall and they are hereby directed to meet at Newport, and after being duly sworn by the clerk of said county, proceed to fix upon a place within said county for holding the courts thereof as near the centre of said county as convenience and eligibility of place will admit; which place so fixed upon shall be deemed the permanent seat of justice for the said county of Campbell.

SEC. 3. *And be it further enacted,* That all proceedings heretofore had and done respecting the fixing or establishing the seat of justice within and for the said county of Campbell are hereby declared null and void.

November Session, 1796.

1796

(IF THE reader will do well to read chapter 266 of this volume before he reads any other act of this session.

CHAPTER CCXLIII.

An ACT to reduce into one the several acts respecting the establishment of Ferries.

See acts of November session, 1798, (Vol. II. chap. 147) by which a right of appeal on law and fact was given to the party applying. See also acts of 1806, (Vol. III. chap. 374.)

SECTION 1. *BE it enacted by the general assembly,* That the courts of the several counties within this commonwealth shall be and are hereby empowered to establish public ferries across those rivers or creeks within their respective counties, whenever they shall deem it necessary; provided that no such ferry shall be established unless the parties owning lands on both sides any such river or creek shall have had one month's notice that application would be made for the establishment of such ferry.

County courts may establish ferries.

Notice of the application to be given.

SEC. 2. When any river or creek shall be the boundary line between two counties, and any person owning lands on either side of the said river or creek shall wish to have a public ferry across the same, he or she shall apply to the court of the county in which his or her land lies; who are hereby authorized to establish such ferry from the land of such person to the opposite side.

Where a river is a boundary which court may establish the ferry.

SEC. 3. And if any person shall think him or herself aggrieved by the establishment of a public ferry or ferries by the county court under this act, he or she shall have the right of appeal, or of obtaining a writ of error or

Party may appeal.

1796.

supersedes, to the court of appeals, from such determination or judgment, upon giving bond and security in like manner as is directed in other cases.

Rates of ferri-
age.

SEC. 4. The rates of ferries shall be fixed by the courts at the time of establishing the same; and the transportation of the following things shall be at the rates following: for every coach, waggon, chariot and the driver, the same as for six horses; for every four wheeled chaise, phaeton, and the driver, the same as for four horses: and for every two wheel riding carriage, the same as for two horses: and for every hogshead of tobacco, the same as for one horse; for every head of neat cattle, the same as for one horse; for every sheep, goat, hog or lamb, one fifth part of the ferriage of a horse.

Penalty for de-
manding high-
er rates.

SEC. 5. If any ferry-keeper shall demand or take from any person a greater sum for the ferriage than is allowed by the court, such offender shall forfeit to the person so overcharged, the ferriage demanded and received, and ten shillings for every such offence, recoverable before any justice of the peace for that county.

Court to have
power over
boats & hands.

SEC. 6. The court of every county wherein a ferry is or shall be established, shall have and is hereby declared to have authority of ordering and directing what boat or boats and the number of hands which shall be kept at each ferry respectively; and the owner of the land whereon any such ferry is, if he hath not already given bond and security, shall, within six months from the commencement of this act, give bond with one surety in the court of the county wherein such ferry is, in the penalty of twenty pounds, with condition that he will keep such ferry, or cause the same to be kept according to law; and will give immediate passage to all public messengers and expresses, when required, from time to time; and in case any such person shall neglect or refuse to give such bond, or to cause the same to be given in his behalf, he shall forfeit and pay forty shillings for every month's refusal or neglect, to the governor for the time being and his successors, for the better support of the contingent charges of government, recoverable with costs in any court of record where the same shall be cognizable.

Owner to give
bond.

The penalty.

Condition.

Penalty for re-
fusing to do so.

Who shall be
ferry free.

SEC. 7. All expresses sent on public services by a commander in chief, colonel, lieutenant colonel, or major, to the governor for the time being, or the commanding officer of the militia in the next county, to give intelligence

of the approach of an enemy, shall be accounted public messengers and expresses and ferry free within the condition and meaning of the bond aforesaid, in case the dispatch carried by such express be endorsed "on public service," and signed on the superscription by the person sending the same.

1796.

SEC. 8. And for encouragement of ferry-keepers, and in consideration of setting over public messengers, and the persons exempted by this act; *Be it enacted*, that all the men attending said ferries be free of county levies, and from all other public services of musters, constables, clearing highways, impressments, and other things of like nature; and that keepers of ferries shall not be chargeable with any fee for giving bond; and if the county court shall find it requisite or useful that a tavern be kept at any ferry, they may license such ferry-keeper to keep tavern without a fee for such license on obtaining the same, notwithstanding there be a sufficient number of taverns in the same county: *Provided always*, that every ferry-keeper so licensed to keep tavern, shall give bond and security, and be liable to the same penalties as other tavern-keepers; and if any person whatsoever shall, for reward, set any person over any river or creek, whereupon public ferries are appointed, he or she so offending shall forfeit and pay five pounds current money for every such offence; one moiety to the ferry-keeper nearest the place where such offence shall be committed, the other moiety to the informer; and if such ferry-keeper informs, he shall have the whole penalty to be recovered with costs.

Ferry-keeper
free from cer-
tain duties.

May keep a ta-
vern without
fee for license.

Provido,

Penalty on per-
sons setting o-
ver others.

SEC. 9. And all ferries which may be hereafter established, and which shall not be furnished with necessary boats and ferry-men within the space of six months after the establishment thereof, or shall at any time thereafter be wholly disused and unfrequented for the space of two years, shall be and the same is hereby discontinued.

How ferries
may be discon-
tinued.

SEC. 10. And it shall be lawful for the court of the county in which such ferry or ferries shall be, on complaint to them made, to summon the proprietor or proprietors of the same to shew cause why it shall not be discontinued, and to be decided according to the testimony adduced.

Proprietor may
be summoned

SEC. 11. It shall and may be lawful for any keeper of a ferry to take into his boat or boats, any passenger or

1796.

passengers, carriages, horses, or cattle of any kind whatsoever on either side, to convey them over, and to receive the ferriages for the same, any law, usage or custom to the contrary notwithstanding.

CHAPTER CCXLIV.

An ACT for forming a new county out of the counties of Jefferson and Nelson.

Approved December 13, 1796.

Bullitt county
formed.

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of January next, all that part of the counties of Jefferson and Nelson, included in the following bounds to wit, beginning on Salt river, opposite the mouth of Mill creek; thence a straight line to the Elk lick, near Mr. Chapman's; thence on a straight line to Floyd's fork, where the public road from Louisville to Bairdstown crosses the same at Hickman's—thence a direct line to a point on the boundary line between Shelby county and the said county of Jefferson, seven miles northwardly of the mouth of Plumb creek; thence with the said line to Salt river at the mouth of Plumb creek; thence with a straight line to the mouth of the west fork of Cox's creek; thence up the same to the head; thence to the nearest waters of Wilson's creek; thence down said creek to its junction with the Rolling fork; thence down the same to Salt river; thence down the same to the beginning, shall be one distinct county, and called and known by the name of Bullitt.

✶ The remainder of this act was temporary and has had its effect.

CHAPTER CCXLV.

An ACT prescribing the mode of licensing Counsel or Attornies at law.

Approved December 13, 1796.

An act was passed at the January session 1798, excluding attornies from the north-western territory and state of Tennessee, (Vol. II. Chap. 14.) and one in 1807 excluding attornies from the Indiana territory, (Vol. III. Chap. 505.) An act of 1786 has the following provision "If the general court from their own observation, detect any mal-practice in a counsel or attorney of that court, or if a complaint in writing be made to them of such mal-practice in the said court, or in the court of a county, city or borough, the party accused shall be summoned to shew cause why an information should not be filed against him; and if such information be ordered and he be found guilty of the matter therein

charged, the said general court may either suspend his licence during a certain time, or vacate it altogether, as they shall think him to have deserved. And the high court of chancery and court of admiralty, upon the like detection or complaint of mal-practice in those courts respectively, shall proceed in the same manner against a counsel, attorney or proctor, and may inflict the same punishment upon the offender. No counsel or attorney at law, practising in the court of a county, city or borough, shall be permitted by the judges, to practice the same profession in the high court of chancery or general court."

1796.

SECTION 1. *BE it enacted by the general assembly,* That no person shall be permitted by any court to practice therein, as counsel or attorney at law, unless he shall have obtained a license in writing from two or more of the judges of the court of appeals or district courts; which license, if he produce to them a certificate from the court of any county, that he is a person of honest demeanor, such two or more judges are empowered and required to grant under their hands and seals, if after examination it be their opinion that he is duly qualified: but nothing herein contained shall be so construed as to affect any person who may have obtained a license from the judges of the general court in Virginia, and was an inhabitant of the district of Kentucky at the time it was formed into a separate state, or from the judges of the supreme court for the district of Kentucky; but such person shall be permitted to practice as counsel or attorney in any court, by virtue of such license.

License to be obtained.

Exceptions.

Shall take an oath.

SEC. 2. Every counsel or attorney before he be permitted to practice, shall take the following oath or affirmation, to wit: "I do swear that I will honestly demean myself in the practice of a counsel or attorney at law, and will execute my said office according to the best of my knowledge and ability."

Form.

Who not suffered to practice

SEC. 3. A person who shall have been convicted of treason, felony, forgery or wilful and corrupt perjury, shall not be suffered to practice in any court as counsel or attorney.

Commencement.

This act shall commence and be in force from and after the first day of March next.

CHAPTER CCXLVI.

An ACT for the division of Logan county.

Approved December 13, 1796.

SECTION 1. *Be it enacted by the general assembly,* That from and after the first day of March next, the county of

Christian county formed.

1796.

Boundaries.

Logan shall be divided into two distinct counties, that is to say, all that part of the said county including the following bounds, viz : beginning on Green river eight miles below the mouth of Muddy river ; thence a straight line to one mile west of Benjamin Hardin's ; thence a straight line to the Tennessee state line, where it crosses the Elk fork ; thence along the said line to the Mississippi ; thence up the same to the mouth of the Ohio, and up the same to the mouth of Green river ; thence up the same to the beginning, shall be one distinct county, and called and known by the name of Christian : and all the residue of the said county shall retain the name of Logan.

The remainder of this act was temporary and has had its effect.

CHAPTER CCXLVII.

An ACT for the division of Clark County.

Approved December 14, 1796.

Montgomery
county formed.

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of March next, all that part of the county of Clark lying northwardly and eastwardly of the following bounds, to wit : beginning on the Bourbon line at a red oak tree marked C. L. on the side of the road leading from Mountsterling to Paris, thence a straight line to strike the dividing ridge between Hingston's and Stoner's waters, where the road leading from Winchester to Mountsterling crosses said ridge ; thence the same course continued, crossing Red river, until it strikes the Kentucky river, shall be one distinct county, and called and known by the name of Montgomery.

The remainder of this act was temporary and has had its effect.

CHAPTER CCXLVIII.

An ACT for erecting a new County out of the Counties of Mason and Campbell.

Approved December 14, 1796.

Bracken coun-
ty formed,

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of June next all that part of the counties of Mason and Campbell included within the following bounds, to wit: beginning on the

Ohio river, one and a half miles below the mouth of Lee's creek; from thence a direct line to the north fork of Licking, such a course that will intersect the end of a line drawn nine miles due west from Mason court-house; thence a direct line to the mouth of Beaver creek, on Licking; thence down Licking to a point half way between the confluence of the north and south forks thereof; thence a direct line to the mouth of big Stepstone, on the Ohio river; thence up the same to the beginning, shall be one distinct county, called and known by the name of Bracken.

1796.

☞ The remainder of this act was temporary and has had its effect.

CHAPTER CCXLIX.

An ACT to provide Houses for the accommodation of the Governor of this Commonwealth.

Approved December 14, 1796.

By this act twelve hundred pounds were appropriated for the purpose of purchasing a lot and building thereon a suitable dwelling house at the seat of government, for the accommodation of the governor and his successors; to be conveyed to them for the use of the commonwealth. Three commissioners were appointed to effect the same, and also to provide the governor with necessary furniture.

CHAPTER CCL.

An ACT to ratify and confirm the proceedings of the Trustees of the Town of Winchester.

Approved December 14, 1796.

WHEREAS by the act passed in the year 1793, establishing the town of Winchester, sixty-six acres of land, the property of John Baker, was laid off for that purpose, and vested in the trustees, who, proceeding to lay off said land into lots and streets, found it expedient to include within the said sixty-six, ten and a half of the lands of Josiah Hart: Therefore,

Preamble.

SECTION 1. *Be it enacted by the general assembly, That* the aforesaid ten and a half acres of land be, and the same is hereby vested in the said trustees, who shall possess the same powers in the disposal of the said land, as were prescribed in the above recited act, and shall account for the profits arising from the sale of lots, &c. to the said Josiah Hart, in the same manner as they are di-

Land vested.

1796.

rected with the said John Baker ; hereby ratifying and confirming the proceedings of the said trustees in the same manner as heretofore in the above recited act.

Commence-
ment.

This act shall commence and be in force from and after the passage thereof.

—:~::~~::~—
CHAPTER CCLI.

An ACT for placing the Register of the Land office on the Civil List.

Approved December 14, 1796.

Preamble.

WHEREAS the profits accruing to the register of the land office being much greater than the duties of that office require : Therefore,

Register to ac-
count for all
fees upon oath.

SECTION 1. *Be it enacted by the general assembly,* That from and after the first day of January next, all the fees that shall hereafter become due for services of every nature and kind whatsoever to be performed in the land office, shall be accounted for with the auditor, and paid regularly into the treasury at the end of every six months in the following manner : The register shall account for the whole profits, making oath or affirmation (as the case may be) that the fees so accounted for are the whole profits accruing from the said office, so far as he knoweth or believeth, up to the date of such account ; and moreover his account of fees received shall be fairly stated and compared by the auditor with the books of his office before the accounts shall be passed : and if the register of the land office shall any time fail to account according to the directions of this act for the space of six months, he shall forfeit and pay the sum of two thousand pounds, to be recovered by motion in the name of the governor for the time being, in any court of record by the attorney-general on thirty days previous notice : and in all cases of motions for money due from the register, the *onus probandi* shall lie on the defendant. The register shall enter into bond with sufficient security to the governor and his successors for the time being, for the due and faithful execution of his office, on or before the first day of January next, on failure of which his office shall be considered as vacated.

Penalty for
failing.

How recover-
able.

To give bond.

Not to give
credit.

SEC. 2. *And be it further enacted,* That on receiving each survey into the register's office, the fees esta-

blished by law that will accrue on the same, including the issuing the grant thereupon shall be paid down : and if the register shall credit any person, he shall account for the fees so credited in the same manner as if they had been received : and that provision may be made for the payment of a salary to the register of the land office, adequate to his services,

1796.

SEC. 3. *Be it further enacted*, That from and after the said first day of January, he shall be considered as an officer of the civil list, and shall have and receive the sum of two hundred pounds annually ; which sum shall be paid in the same manner as other salaries of the civil list are payable.

Placed on civil list.
His salary.

SEC. 4. And there shall be provided by the register, at the public expence, all necessary implements for his said office ; the account of which being presented to, and approved of by the governor, the auditor shall issue a warrant on the treasurer for payment accordingly.

Implements of his office provided at public expence.

CHAPTER CCLII.

An act for the division of the county of Logan, and for other purposes.

Approved December 19, 1796.

SECTION 1. *BE it enacted by the general assembly*, That from and after the first day of March next, all that part of the county of Logan that is included in the following bounds, to wit : beginning at the mouth of Little Muddy creek, thence a direct line to the old Buffalo Ford, about one mile above James Hall's on Gasper river ; thence a direct line to colonel Dugan's, so as to include him in the proposed county ; thence a line to strike the Tennessee line, so as to include a settlement known by the name of Georgia settlement, in the said county of Logan ; thence with the Tennessee line to the Cumberland river, and up Cumberland to the Green line, and with the Green line to Green river, and down Green river to the beginning, shall be one distinct county, and called and known by the name of Warren.

Boundaries.

Name.

The 2d, 3d, 4th and 5th sections of this act were temporary, and have had their effect.

SEC. 6. An inspection of tobacco, flour and hemp, shall be established near the junction of the Fair fork and Mauldin's fork of Red river, in the said county of Logan, on

Inspection established.

1796. the lands of John Bailey, now occupied by Elijah Bailey, subject to the same rules and regulations as inspections of the like kind are by law under, within this commonwealth.

Commence- This act shall commence and be in force from and after the first day of March next.

CHAPTER CCLIII.

An ACT for the inspection of Hemp and Flour.

Approved December 14, 1796.

Vide the prælection on chap. 58.

Inspections es-
tablished.

SEC. 1. *Be it enacted by the general assembly, That inspections of flour and hemp shall be established at the following places, to wit: in the county of Woodford on the north side of the Kentucky river, at the mouth of Greer's creek, on the lands of David Mitchell: in the county aforesaid on the lands of Thomas Turpin, at or near Delany's ferry: on the lands of James Hogan, at the mouth of Hickman, in the county of Fayette: at the mouth of Jessamine on the lands of John Lewis in the said county: at the mouth of Brashear's creek in the county of Shelby, on the lands of Richard Taylor and Thomas Carland: at Boonsborough, in the county of Madison: at Bedinger's ware house, near the Blue Licks, Bourbon; and at Riddle's mill in the same county; and at the mouth of Bracken in the county of Mason: in Nelson, at the mouth of Simpson's creek, on the lands of Richard Stephens; subject to such rules and regulations as inspections of the like kind are under by law in this commonwealth.*

Commence-
ment.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLIV.

An act giving further time to enter Lands with the auditor and commissioners.

Approved December 14, 1796.

Connected with the subject of revenue. See the prælection to chap. 10.

Preamble.

WHEREAS the time limited by law for listing lands with the auditor and commissioners of the tax in the respective counties has expired, and many good citizens of

this commonwealth, as well as non-residents, have forfeited their lands through ignorance of the laws and intervening circumstances, which prevented a compliance with the same : for remedy whereof,

1796.

SEC. 1. *BE it enacted by the general assembly,* That all lands so forfeited, shall be and the same are hereby re-vested in the respective owners ; and any person whether he be a resident of this state or non-resident, shall have the further time of one year from and after the passage of this act, to list his lands agreeably to the directions of the revenue law : and any person listing his lands within the time aforesaid, shall as effectually secure his title and interest to such lands to all intents and purposes, as if they had been listed within the time required by law.

Further time to enter lands.

This act shall commence and be in force from and after the passage thereof.

Commencement.

CHAPTER CCLV.

An ACT to prevent Frauds and Perjuries.

Approved December 14, 1796.

SECTION 1. *BE it enacted by the general assembly,* That no action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer any debt or damages out of his own estate ; or whereby to charge the defendant, upon any special promise, to answer for the debt, default or miscarriage of another person ; or to charge any person upon any agreement made upon consideration of marriage ; or upon any contract for the sale of lands, tenements or hereditaments ; or the making any lease thereof for a longer term than one year : or upon any agreement which is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized.

Certain actions not to be brought upon verbal promises

SEC. 2. Every gift, grant or conveyance of lands, tenements or hereditaments, goods or chattels, or of any rent, common or profit of the same, by writing or otherwise ; and every bond, suit, judgment or execution had or made and contrived of malice, fraud, covin, collusion

Fraudulent gifts &c. void.

1796.

Conveyances
of goods &c.
without valua-
ble considera-
tion deemed
fraudulent,

Pretended loans
&c. deemed
fraudulent,

or guile to the intent or purpose to delay, hinder or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures, or to defraud or deceive those who shall purchase the same lands, tenements or hereditaments, or any rent, profit or commodity out of them, shall be from thenceforth deemed and taken (only as against the person or persons, his, her or their heirs, successors, executors, administrators or assigns, and every of them, whose debts, suits, demands, estates and interest, by such guileful and covinous devices and practices aforesaid, shall or might be in any wise disturbed, hindered, delayed or defrauded, to be clearly and utterly void; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and moreover if a conveyance be of goods and chattels, and be not on consideration deemed valuable in law, it shall be taken to be fraudulent within this act, unless the same be by will duly proved and recorded, or by deed in writing acknowledged or proved if the same deed includes lands also, in such manner as conveyances of land are by law directed to be acknowledged or proved; or if it be of goods and chattels only, then acknowledged or proved by two witnesses in the office of the court of appeals or district court, or in the court of quarter sessions or county court of the county wherein one of the parties lives within eight months after the execution thereof, or unless possession shall really and *bona fide* remain with the donee; and in like manner where any loan of goods and chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained by the space of five years, without demand made and pursued by due process at law, on the part of the pretended lender; or where any reservation or limitation shall be pretended to have been made of an use or property by way of condition, reversion, remainder or otherwise, in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers of the persons aforesaid, so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation or limitation of use or property, were declared by will or deed in writing, proved and recorded as aforesaid.

SEC. 3. This act shall not extend to any estate or interest in any lands, goods or chattels, or any rents, common or profit, out of the same, which shall be upon good consideration and *bona fide* lawfully conveyed or assured to any person or persons, bodies politic or corporate. 1796.
 This act limited.

CHAPTER CCLVI.

An act to reduce into one the several acts establishing county courts, and regulating the proceedings therein and concerning the appointment of Justices of the peace and their jurisdiction.

Approved December 17, 1796.

See the preface to chapter 23. This act contains various ill-connected provisions selected from many acts of Virginia and Kentucky; but the repealing clause attached to it leaves us at liberty to take all the former acts into consideration in construing this.

In the year 1662 (14 Car. 2) the legislature of Virginia passed the following act, "Whereas many babbling women slander and scandalize their neighbors, for which their poor husbands are involved in chargeable and vexatious suits and cast in great damages:

"Be it enacted that in actions of slander occasioned by the wife, after judgment passed for the damages, the woman shall be punished by ducking; and if the slander be so enormous as to be adjudged at greater damages than five hundred pounds of tobacco, then the woman shall suffer a ducking for each five hundred pounds of tobacco adjudged against the husband, if he refuses to pay the tobacco."

This whimsical law was repealed at least sixty years ago, and no similar punishment has ever since found a place in the codes of Virginia or Kentucky—Nevertheless the important power of erecting a ducking stool has uniformly been delegated to the county courts of each state: and in an act of November session, 1798, a fee is given to the sheriff for ducking a person.

It seems that the legislature intended by this act to confer on a single justice out of court (subject to an appeal) all the jurisdiction which the county courts under the laws of Virginia had on summons & petition; but the looseness of the expression "*all causes* of less value than five pounds, &c." has occasioned much controversy. It has been asked, do these *causes* include torts—if so, are assaults, batteries, slander, &c. cognizable before a single justice. If they do not, why are not excluding words used to restrict a phrase evidently calculated to include them. The Virginia acts will probably remove the difficulty. The act of 1748, chapter 4, section 21, instead of "*all causes*" has the words "*all suits brought for any debt or demand due by judgment, obligation, or account, for any sum or sums of money or tobacco &c.*"—And in the next section provision is made that actions of detinue and trover, where the thing demanded is exclusive of damages of less value than five pounds, shall be prosecuted by summons and petition, and not otherwise.

An act of 1786, (chap. 62 of the session acts,) has the following provision: "Be it enacted by the general assembly, that any debt or penalty amounting to more than twenty-five shillings or 200 pounds of tobacco, may be demanded by petition to the court of a county, city or borough. And any person may by petition demand and recover goods detained or the value of them and damages, for the detention or damages for goods found by the defendant and converted to his own use, where the goods with the damages are not of greater value than

1796

100 shillings or 800 pounds of tobacco. And whosoever shall bring any other action than a petition, if it shall appear either by his own shewing in the declaration, or by the verdict of a jury that he might have brought a petition by this act, he shall be non-suited."

The act of 1748 before referred to declares that on a summons and petition there shall be no trial by jury.

Justices to be appointed.

SEC. 1. *Be it enacted by the general assembly,* That there shall be a competent number of justices of the peace appointed in the several counties within this commonwealth.

To take oath.

SEC. 2. Every person so appointed a justice of the peace, before he enters on the execution of his office, shall take the oath prescribed by the constitution of this state; and if any person whatsoever, shall presume to execute the office of a justice of the peace, without first qualifying himself in the manner by this act required, he shall for every such offence forfeit and pay the sum of fifty pounds; one moiety to the commonwealth, and the other moiety to the informer, to be recovered by an action of debt, in any court of record within the state; which oath may be administered by any one justice of the peace to another, and a certificate of which shall be recorded in the court of the county to which the justice taking the same shall belong.

Penalty for failure.

Monthly courts to be held in each county.

SEC. 3. In every county of this state a monthly court shall be held by the justices thereof, at the several respective places that have been or may be assigned for that purpose, upon the days which are or may be limited by law for holding courts for each county respectively, and at no other time and place: which courts shall be called county courts, and shall consist of the justices appointed for each county, as above directed, and three of them shall be sufficient to hear and determine all causes depending in the said county courts: *Provided* nevertheless, that if the business of any of the said courts cannot be determined on the court day, the justices may adjourn from day to day, until all causes and controversies then depending before them shall be heard and determined, or otherwise continued until the next court: *Provided* also, that no monthly court shall be held for any county, in any month, in which a court of quarter-sessions is directed by law to be held for the same county.

May adjourn from day to day

Proviso.

Their jurisdiction.

SEC. 4. The county courts shall and may have cognizance, and shall have jurisdiction of all causes respecting wills, letters of administration, mills, roads, the ap-

pointment of guardians, and settling of their accounts, and of admitting of deeds and other writings to record : they shall superintend the public inspections, grant ordinary license, and regulate and restrain ordinaries and tipling houses, and appoint processioners : they shall hear and determine according to law, the complaints of apprentices and hired servants, being citizens of any one of the United States, against their masters or mistresses, or of the masters or mistresses against their apprentices or hired servants ; they shall have power to establish ferries and regulate the same, and to provide for the poor within their counties.

1796

SEC 5. From time to time forever hereafter, the court of every county of this commonwealth, shall cause to be erected and held in good repair, (or where the same shall be already built, shall maintain and keep in good repair) within each respective county, and at the charge of such county, one good and convenient court-house of stone, brick or timber, and one common jail and county prison well secured with iron bars, bolts and locks ; and also one pillory, whipping post and stocks ; and where land shall not be already provided and appropriated for that purpose, such court may purchase two acres, whereon to erect the public buildings for the use of their county, and for no other use whatsoever : and to every court-house already erected and established, two acres of the land built upon and adjacent thereto, not having any house, orchard, or other immediate conveniences thereon, shall be, and remain appropriated to such court-house ; and the fee simple thereof is hereby declared to be in the court of the same county and their successors, to the use of such county as aforesaid ; but where a court-house is already built in any town, the land so laid off for the same and the other public buildings, shall be judged and held sufficient ; and if the justices of any county court shall at any time hereafter fail to keep and maintain a good and sufficient prison, pillory and stocks, every member of the court so failing, shall forfeit and pay five hundred pounds of tobacco ; one moiety to the commonwealth, and the other moiety to the informer, to be recovered with costs by action of debt or information, in any court of record in this commonwealth : and moreover the court so failing shall be liable to the action of the sheriff from time to time, for all damages recovered against

To erect public buildings.

And purchase land therefor.

Penalty on failing to keep a sufficient jail.

1796.

him upon any escape for the want of a sufficient prison; and such sheriff, or his executors or administrators, shall and may sue for the same by action of debt or information brought in the district court against the justices so failing, or the survivors of them: and upon recovery in such suit, the judges of the said court are hereby empowered and required to proportion how much every particular justice of the court so failing, who shall be then living, and the executors or administrators of such as shall be deceased, shall pay respectively, and to enter up judgment accordingly, whereupon one or more executions shall or may be issued.

To lay off prison rules.

SEC. 6. And the justices of every county shall, and they are hereby empowered and required to mark and lay out the bounds and rules of their respective county prisons, not exceeding ten acres of land, adjoining such prison; which marks and bounds shall be recorded, and renewed from time to time as occasion shall require; and every prisoner not committed for treason or felony, giving good security to keep within the said rules, shall have liberty to walk therein, out of the prison, for the preservation of his or her health, and keeping continually within the said bounds, shall be judged in law a true prisoner. And if the court of any county shall at any time think fit, they are hereby authorised and empowered, at the charge of their county, to cause a ducking stool to be built in such convenient place as they shall direct.

May erect a ducking stool.

Justices to be conservators of the peace.

SEC. 7. The justices so appointed, and each of them, shall be conservators of the peace within their respective counties, and shall have cognizance of all causes of less value than five pounds, current money, or one thousand pounds of tobacco; in which said causes they may give judgment, and thereupon award execution; and in all such cases discount shall be allowed, and the justices shall give judgment either for the plaintiff or defendant, as the case may be, provided the plaintiff have reasonable notice of such discount: *Provided always*, that no execution shall be issued against the body of any defendant, unless the judgment exceed the sum of twenty-five shillings; which execution shall be executed and returned by the sheriff or constable to whom directed, in the same manner as other executions are to be executed and returned.

Power & jurisdiction.

Proviso.

SEC. 8. All judgments given by any such justice or

justices, when the amount thereof shall not exceed twenty-five shillings, shall be final : in all judgments where the amount thereof shall exceed twenty-five shillings, the party against whom such judgment shall be given shall have a right to appeal from the same to the next county court to be held for the county wherein the judgment was rendered, provided there be ten days between granting the judgment from which the appeal is made, and the sitting of the court ; whereupon the justice or justices who gave such judgment, shall suspend all further proceedings thereon, and shall return the papers and the judgment he had given, to the clerk of the said court ; and the said court shall thereupon at their next session hear and determine the same in a summary way, without pleading in writing, according to the justice of the case, unless the said court, for good cause to them shewn, shall continue the same to the next court, beyond which second court such appeal on no pretence shall be continued ; and execution may be taken out on a judgment given by the said court on such appeal, in the same manner as if the cause had been originally instituted in the said court. In all cases where any party may desire to appeal from a judgment of a justice, pursuant to this act, he shall receive from the justice a copy of such judgment, and produce the same to the clerk of the county court, and shall enter into bond in the office of such clerk, in a penalty double the sum of such judgment with security, who shall be approved of by the justice from whose judgment the appeal is made : such bond shall be conditioned for the payment of the debt and costs in case the judgment shall be confirmed on the trial of the appeal. Upon the execution of such bond, the clerk shall certify the same to the magistrate and constable, enjoining further proceedings, and issue a summons to the appellee to appear at the court to which the appeal is returned, noting the day the same shall be set for trial by the clerk. The constable shall summons the appellee, his agent or attorney, if within the county ; which summons shall be executed ten days before the court where the same shall be tried.

1796.

For what sum
appeals may be
granted.

Proceedings on
appeals.

SEC. 9. Where the appellee shall reside in another county, the clerk of the court to which the appeal is made shall have power and authority to issue a summons to cause such appellee to appear before the court ; which

Further regula-
tions as to ap-
peals,

1796,

summons shall be executed by the appellant or some other person for him, on the appellee, and satisfactory proof of such service shall be made to the court to which the summons shall be returned ; and if the appellant shall neglect to execute or cause to be executed such summons on the appellee before the second court after praying an appeal, the judgment of the justice shall stand confirmed.

Papers and costs
to be certified.

SEC. 10. It shall be the duty of the justice who gave the judgment, to lodge with the clerk, at or before the next court, any papers produced and read on the trial before him ; and if no papers, to certify the same to the clerk, noting therein all the costs : the clerk shall docket the same in order. The court shall proceed and determine the appeal in a summary way at their next court, and give such judgment as to them shall seem just, with respect to the costs as well as the debt ; but may grant a continuance if they deem it right, to the next term, but not longer. And in all appeals from the judgment of a single justice, the parties shall have the benefit of all legal testimony that can be produced.

Parties may
produce testi-
mony.

Witnesses liv-
ing in another
county may be
summoned.

SEC. 11. Any justice of the county court shall have power to issue a summons to cause any person as a witness, living in another county, to appear and give evidence in any matter that may be depending before him, at the request of either party ; and such witness shall be entitled to two-pence per mile for travelling to and from, and ferriages to be taxed in the bill of costs.

Their allow-
ance.

Justices' power
to punish con-
tempt.

SEC. 12. The monthly county courts, or any justice thereof, when acting in their judicial capacity, shall have the same power to punish contempts of their authority, as is given the courts of quarter sessions.

CHAPTER CCLVII.

An ACT to amend an act entitled "an act to establish an Inspection of Flour and Hemp."

See the prelection to chapter 58.

Approved December 17, 1796.

Preamble.

WHEREAS it is provided by the above recited act that no inspection shall be established at any of the places therein named, unless the courts of the counties in which the same shall be situated, shall agree with and receive

from the proprietors of the land at the places aforesaid, bond and approved security to be given to the justices of the said courts and their successors, for the supplying, building and keeping in repair such ware-house for the inspection of flour and hemp, at the place so appointed, within such time and in such manner as they shall direct, and for furnishing weights and scales, and such prizes as may be necessary, at his or her own expence: and whereas by default of the owner or owners of the land at sundry of the places for inspection mentioned in the above recited act, no inspection has yet become established, and it is but reasonable that all flour put on board of any boat or vessel for exportation, at the several places aforesaid, previous thereto, ought to be inspected:

1796.

Recital.

SEC. 1. *Be it therefore enacted by the general assembly,* That it shall be lawful for the governor to appoint one fit and proper person as an inspector of flour and hemp at the several places where inspections already have or may hereafter be established; although no person or persons shall have entered into bond for supplying and keeping in repair such ware-houses or building as may be necessary for storing the same.

Inspectors to be appointed,

SEC. 2. *And be it further enacted,* That the courts of the counties where inspections have been established according to the above recited act, (if the houses already built at either of the said places of inspection are insufficient for the reception and safe keeping of the flour and hemp brought to them) shall, and they are hereby empowered to receive proposals and agree with any person or persons offering to furnish a ware-house or ware-houses, at the aforesaid places, agreeable to the above recited act: *Provided nevertheless,* that it shall be lawful for flour and hemp to be stored in any part of any town or other place where an inspection may have been directed to be established.

Courts may contract for other ware-houses in certain cases.

SEC. 3. *And be it further enacted,* That any flour or hemp brought to any of the places for inspection, may be inspected on land, or on board of any boat in which it is loaded for exportation; nor shall any owner of any ware-house receive any storage for flour or hemp not put into his, her, or their warehouse. And no flour shall be inspected more than seven days previous to its being loaded on board of any boat for exportation.

Flour and hemp may be stored in any place. May be inspected on board of a boat.

SEC. 4. *Provided, and be it further enacted,* That the

1796. ware-house or ware-houses erected as aforesaid, or agreeable to the above recited act, shall from henceforth remain in the possession and be kept in repair by the respective proprietors, who shall be allowed four pence for every barrel, and four pence for every 112 lbs. weight of hemp stored therein; nor shall the said inspectors in any case be obliged to receive any storage for the use of the proprietor of any such ware-house whatsoever.

Ware-houses
to be kept in
repair.

Penalty on ex-
porting flour &c
uninspected.

How to be re-
covered and ap-
plied.

Inspector's fees

Commence-
ment.

SEC. 5. *Provided always, and be it further enacted,* That any person or persons exporting flour to foreign markets, failing to have the same previously inspected according to law, shall forfeit such flour so exported, or the value thereof, to be recovered before a justice of the peace, or in any court of record having cognizance in like cases, one half to the informer, the other half to the commonwealth, to be collected and paid into the public treasury by the sheriff of the county where the same may be recovered. And in case of any suit or suits hereafter brought to recover the penalty for the exportation of uninspected flour, the plaintiff shall be entitled to recover, unless the defendant prove that the flour in question was inspected previous to exportation, by producing to the jury or justice before whom the cause shall be tried, the inspector's certificate of inspection, or other satisfactory proof. *And be it further enacted,* That there shall be paid to the inspector, by the shipper or exporter of every barrel of flour, three pence, and for every 112 lbs. weight of hemp, three pence for the inspection thereof, and no more.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLVIII.

An ACT to reduce into one, the several acts or parts of acts concerning Limitations of Actions.

Approved December 17, 1796.

This is copied verbatim from the laws of Virginia. A small amendment was made to it at the January session of 1798, (Vol. II. Chap. 38.)—In 1807 a special act of limitations was passed as to suits by persons held in slavery suing for their freedom, (Vol. III. Chap. 485.)

Limitation of
writs of right.

SECTION 1. *BE it enacted by the general assembly,* That any person may maintain a writ of right upon the possession of *seisin* of his ancestors or predecessors, with-

in fifty years, or any other possessory action upon the possession or *seisin* of his or her ancestor or predecessor within forty years next before the test of the writ ; but no person shall maintain a real action upon his own possession or *seisin*, but within thirty years next before the test of the writ.

1796.

Possession of
ancestors.
Own possession.

SEC. 2. All writs of *forendon in descender*, remainder or reversion of any lands, tenements or hereditaments whatsoever, hereafter to be brought upon any title heretofore accrued, or which may hereafter fall or accrue, shall be sued out within twenty years next after such title or cause of action accrued, and not afterwards ; and that no person or persons who now hath, or have, or may hereafter have any right or title of entry into any lands, tenements or hereditaments, shall make any entry but within twenty years next after such right or title accrued, and such person shall be barred from any entry afterwards.

*Forendon in
descender.*

Right of entry.

SEC. 3. *Provided nevertheless*, That if any person or persons entitled to such writ or writs, or to such right or title of entry as aforesaid, shall be or were under the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or not within this commonwealth at the time such right or title accrued or coming to them ; every such person and his or her heirs, shall and may, notwithstanding the said twenty years are or shall be expired, bring and maintain his action or make his entries within ten years next after such disabilities removed, or death of the person so disabled, and not afterwards.

Exceptions.

SEC. 4. All actions of trespass *quare clausum fregit* ; all actions of trespass, detinue, actions *surtrover* and replevin, for taking away of goods and chattles ; all actions of account, and upon the case, other than such accounts as concerns the trade of merchandize between merchant and merchant, their factors or servants ; all actions of debt grounded upon any lending or contract without specialty ; all actions of debt for arrearages of rent ; all actions of assault, menace, battery, wounding and imprisonment, or any of them which shall be sued or brought at any time hereafter, shall be commenced and sued within the time and limitation hereafter expressed, and not after ; that is to say, the said actions upon the case other than for slander ; and the said actions for account ; and the said actions for trespass, debt, detinue and replevin

Personal actions

1796.

for goods and chattels ; and the said action of trespass *quare clausum fregit*, within five years next after the cause of such action or suit, and not after ; and the said action of trespass, assault and battery, wounding and imprisonment, or any of them, within three years next after the cause of such action or suits, and not after ; and the said action upon the case for words, within one year next after the words spoken, and not after.

Goods, wares,
&c,

SEC. 5. All actions or suits founded upon account for goods, wares and merchandize sold and delivered, or for any article charged in any store account, shall be commenced and sued within twelve months next after the cause of such action or suit, or the delivery of such goods, wares and merchandize, and not after, except that in case of the death of the creditors or debtors before the expiration of the said term of twelve months, the further time of twelve months from the death of such creditor or debtor, shall be allowed for the commencement of any such action or suit. And to prevent imposition or deception herein, the respective time of date of the delivery of the several articles charged in any such account, or of any receipt taken for the delivery of them shall be particularly specified ; and if any merchant or trader shall wilfully post-date any article or articles in such account, or the receipt taken for the delivery of them, he shall forfeit and pay ten-fold the amount of the article or articles, or of the receipt taken for the delivery of them so post-dated, to be recovered with costs before any justice of the peace, where the penalty incurred shall be under five pounds, or amount to that sum only. And by action of debt or information, where the penalty shall be more than five pounds, to the informer, where the informer prosecutes, or to the commonwealth, where the prosecution shall be first instituted on the public's behalf : and to prevent any doubts in the construction hereof, *it is hereby declared*, that the before-mentioned limitation of twelve months shall take place, and be computed from the respective dates or times of the delivery of the several articles entered or charged in any such account : and that all such articles as shall have been more than twelve months standing when the action or suit was commenced, shall be disallowed and rejected, and verdict shall be given or judgment rendered for no more than the amount of such articles as appear to have been actually charged or

delivered within twelve months next before the commencement of the suit as aforesaid.

1796

SEC. 6. *Provided nevertheless*, that if in any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed afterwards by error, or a verdict passed for the plaintiff, and upon matter lodged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ, or bill, that in all such cases the party, plaintiff, his heirs, executors, or administrators, as the case shall require, may commence a new action or suit from time to time within one year after such judgment reversed, or such judgment given against the plaintiff, and not after.

SEC. 7. *Provided always*, that in all questions which may arise in any court of record, upon any act for limitation of actions, making entries into lands, or limitation of evidence in the computation of time, the several periods between the twelfth day of April one thousand seven hundred and seventy-four, and between the twelfth day of April one thousand seven hundred and seventy-eight; and between the first day of January one thousand seven hundred and eighty-one, and the first day of January one thousand seven hundred and eighty-two; and between the fifth day of May one thousand seven hundred and eighty-three, and the twentieth of October in the same year, shall not be accounted any part thereof so as to bar such action, entry or evidence.

Certain periods
not to be calculated.

SEC. 8. *Provided*, that if any person or persons that is, or shall be entitled to any such action of trespass, detinue, action *surtrover*, replevin, actions of account, actions of debt, actions of trespass for assault, menace, battery, wounding or imprisonment, be, or shall be at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years *feme covert, non compos mentis*, imprisoned, beyond the seas or out of the country, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, discover, of sane memory, at large, and returned from beyond the seas, or from without this country, as by other persons having no such impediment should be done.

Infants &c. to
be excepted.

SEC. 9. *Provided also*, that if any person or persons, defendant or defendants to any of the aforesaid actions,

Certain persons
excluded from
the benefit of
this act.

1796.

shall abscond or conceal themselves, or by removal out of the country or the county where he or they do or shall reside, when such cause of action accrued, or by any other indirect ways or means, defeat or obstruct any person or persons who have title thereto, from bringing and maintaining all or any of the aforesaid actions within the respective times limited by this act, that then, and in such case, such defendant or defendants are not to be admitted to plead this act in bar to any of the aforesaid actions ; any thing in this law in any wise to the contrary notwithstanding.

CHAPTER CCLIX.

An ACT for the erection of a new County out of the Counties of Mercer, Lincoln and Madison.

Approved December 17, 1796.

Garrard county formed,

SECTION 1. *BE it enacted by the general assembly,* That from and after the first day of June next all that part of the counties of Mercer, Lincoln and Madison that is included in the following bounds, to wit: beginning at the confluence of Dick's river with the Kentucky river ; thence up Dick's river, with its several meanders, to the mouth of White Oak creek ; from thence a direct course to the tanyard, where the road leading from the mouth of Hickman to the Crab-Orchard crosses Gilbert's creek ; from thence continuing the same course to Madison county line ; thence with said line to Harmon's Lick ; from thence to the White Lick, and down the White Lick fork to Paint Lick creek, and down the said Paint Lick creek to the Kentucky river ; thence down said river to the beginning, shall be one distinct county, and called and known by the name of Garrard.

☞ The remainder of this act was temporary and has had its effect.

CHAPTER CCLX.

An ACT giving longer time to improve lots in Bairdstown.

Approved December 17, 1796.

Preamble.

WHEREAS, it is represented to the general assembly that the time for improving lots in Bairdstown will

shortly expire; and that the inhabitants thereof, as well those who have complied with the law, as those who have not, have compromised and agreed between themselves, that nine months longer time should be given to those to improve their lots, who have failed so to do: Therefore,

1796.

SECTION 1. *Be it enacted by the general assembly,* That the additional time of nine months shall be given to the owners of lots in Bairdstown to improve the same agreeable to law, and no forfeiture shall take place for want of any improvements until the expiration of the time aforesaid; and that the act, entitled "an act concerning the establishment of towns," so far as it relates to the time given to improve lots, shall not be construed to extend to Bairdstown.

Nine months
given to im-
prove lots.

Bairdstown ex-
cepted in a cer-
tain law.

This act shall commence and be in force from and after the passage thereof.

Commence-
ment.

CHAPTER CCLXI.

A collection of the acts or parts of acts of the Virginia assembly, concerning the titles to lands in this commonwealth.

Approved December 17, 1796.

It is the wish of the Editor to bring into view all the laws of Virginia relative to the original titles of land in this state. That which is printed in small type he has introduced himself; the remaining part was printed among the acts of 1796.

As these acts embrace a long series of legislation, and run through a period during which, important changes were made in the rules for construing statutes, it is proper here to apprise the reader of those changes, what they were, and when they took effect. Until the beginning of the year 1787, it was the law of Virginia as well as of England, that all statutes should be adjudged to have passed on the first day of that session in which they were enacted; but in the year 1785, an act was passed entitled "an act concerning election of members to the general assembly," which contained the following clause: "That all acts shall commence from their passage, unless in the act itself, another day is appointed for its commencement." This act took effect from and after the first day of January, 1787.

On the 18th of November, 1789, an act was passed (*inter alia*) for preventing many inconveniences which certain rules for the construction of laws have already occasioned, and may hereafter occasion. By which it was enacted "that whenever one law which shall have repealed another, shall itself be repealed, the former law shall not be revived without express words to that effect;" and "that any act passed during any stated annual session, shall commence on the first day of March, then next ensuing, unless in the act itself another day be particularly mentioned for the passage thereof;" and that "as often as a question shall arise, whether a law passed during any session, changes or repeals a former law passed during the same session, the same

1796

construction shall be made as would have been made if the act entitled an act concerning election of members of general assembly had never been passed." This act took effect January 15, 1790.

It may not be amiss to add, that by an act passed at the November session 1798, (Vol II. Chap. 135,) the first provision of the act of 1789 is repeated—the second is altered so as to read "at the end of three months," but no notice is taken of the last.

ACTS OF 1748, CHAP. XIV. BODY OF LAWS, page 218.

[An ACT directing the Duty of Surveyors of Land.]

Surveyors and their assistants shall give bond and security. SEC. 1. BE it enacted by the Lieutenant Governor, Council, and Burgeesses of this present General Assembly, and it is hereby enacted by the Authority of the same, that all and every person and persons who now is, or are, surveyors of land in any county of this colony, or assistant to such surveyor, shall, within three months after the commencement of this act, and every person thereafter to be appointed surveyor, or assistant, shall, before his entering upon the execution of such trust or office, in the court of that county whereof he is or shall be appointed surveyor, or assistant, enter into bond, with two sufficient sureties, to our sovereign lord the king, his heirs and successors, in the sum of five hundred pounds current money, for the true and faithful execution and performance of his office; and shall also then there make oath and swear that he will truly and faithfully, to the best of his knowledge and power, discharge and execute his trust, office, and employment; which bond and oath the justices of every county court respectively are hereby authorised and required to cause to be entered into, administered, and recorded. And if any surveyor, or assistant, shall presume to execute his office, after the commencement of this act, before such bond and oath by him entered into and taken, he shall not be entitled to demand or receive any fee for the same; and every survey and other matter or thing, so by him done under colour of his office, shall be illegal and void.

And be sworn.

Otherwise their proceedings void

Rules in entries for land.

Penalty on surveyor refusing to do his duty.

How a surveyor may enter land for himself.

11. And be it further enacted, by the authority aforesaid, that when any person shall offer to enter with any surveyor within this colony for any quantity of land not before granted by patent, if the surveyor shall refuse to enter the same, pretending it to have been before entered by some other person, in such case the surveyor shall produce his book of entries to the person offering to enter, and shew him the said entry, and also give an attested copy thereof, if required; the person demanding the same paying for such copy the fee of two shillings and sixpence and no more. And if any surveyor shall refuse to produce his said book to any person requiring the same, so as such demand be made at the surveyor's house, or any other place where his book of entries is, or shall refuse to give a copy of any entry, or to enter any land, when required, where such entry shall be agreeable to, and not interfering with, the orders of the governor in council, relating to the taking up and patenting of lands, or shall refuse, upon reasonable notice to him given, to survey and lay out any lands, for any person legally requiring the same, and which may lawfully be done, every surveyor so refusing shall forfeit and pay to the party grieved, for his or her own use, twenty pounds current money for every such refusal.

111. And be it further enacted by the authority aforesaid, that if any surveyor, or assistant, shall enter for lands, either in his own name or in the name of any other person or persons in his behalf, or for his use, such entry shall be made before a justice of the peace (not being an assistant) of the county where the lands lie, which entry the said justice shall return to the next court, there to be recorded; and every entry, or survey thereupon made, by or for any surveyor, or assistant, after the commencement of this act, in any other manner than is herein before directed, shall be illegal and void, and any other person may enter, survey, and sue forth a patent for the same land.

IV. *And be it further enacted, by the authority aforesaid, that where any entry hath been or shall be made for less than four hundred acres of land, and before surveying the same the person or persons by or for whom such entry was or shall be made shall duly enter for more land adjoining thereto, not exceeding in the whole four hundred acres, the surveyor shall not be entitled to any larger fee for the survey thereof than if the whole quantity had been entered for at first. And where lands to be surveyed shall lie in two counties or districts, such land shall be surveyed by the surveyor of that county, or district, wherein the greatest part lies. And where it shall happen that the title or bounds of any tract of land lying in two counties or districts, shall be in controversy, so as to occasion a survey thereof, by direction of the court wherein such controversy shall be depending, although the surveyors of both counties or districts, shall attend such survey, yet they shall not be entitled to demand or receive any more than as if the service had been done by one surveyor only. And if any assistant surveyor shall presume to make or take any entry or entries, for any person or persons whatsoever, he shall, for every such offence, forfeit and pay the sum of five pounds current money, to the informer, recoverable in any court of record of this dominion, wherein the same is cognizable, by action of debt, or information; and, moreover, such offence shall be deemed a forfeiture of the bond of such assistant.*

V. *And to prevent disputes about the priority of entries for land, and for the greater conveniency of the people, in repairing from time to time to the surveyors of their respective counties, or districts, to make entries for unpatented lands, Be it further enacted, by the authority aforesaid, that there shall be but one surveyor, with whom entries for lands shall be made, for each of the several counties of Brunswick, Amelia, Orange, Albemarle, Augusta, and Louisa; and such surveyor, and all and every surveyor and surveyors of the county of Lunenburg, shall be resident in such county, or district, respectively, whereof he is surveyor, during the time he shall continue in office, on penalty of forfeiting ten pounds current money for every month he should reside out of the same; one moiety of which shall be to the king, his heirs, and successors for the better support of this government and the contingent charges thereof, and the other moiety to the informer.*

VI. *And be it further enacted, by the authority aforesaid, that every surveyor making a survey of land shall see the same plainly bounded, by natural bounds or marked trees, and within five months after survey made shall deliver to his employer a plat and certificate thereof, and shall also enter, or cause to be entered, in a book well bound, to be ordered and provided by the court of his county, at the county charge, a true, correct and fair copy and plat of every survey by him made during his continuance in office, within two months after making the same, and certify the name or names of the person or persons for whom any survey is made, the true quantity of land therein contained, the parish or place where it lies, the rivers, creeks and water courses, and the true boundaries natural or artificial, and the plantations or lands next adjoining; and also shall annually, in the month of June, return a true and perfect list of all surveys by him made to his county court clerk's office, to be recorded, upon penalty of forfeiting for every default in any of the premises, two thousand pounds of tobacco, one half to the king, his heirs and successors, for and towards the better support of this government and the contingent charges thereof, and the other half to the informer. And every county court respectively is hereby declared to have full power and authority, at any time when they think fit, to appoint two or more capable persons of their county to view and examine their surveyor's book of surveys, and to report to them how the same is kept; and upon the death or removal of any surveyor to re-take his book of surveys, and cause the same to be preserved among the county records, or delivered to the next surveyor, as in their discretion they think best.*

VII. *And be it further enacted by the authority aforesaid, That no survey shall be made without chain carriers, to be paid by the party demanding the survey,*

1796.

Rules in special cases.

Assistant surveyor may not make or take any entry.

In what counties the surveyors thereof shall reside.

Penalty 10l. per month.

Surveyor's duty in making surveys, entering plats, &c.

Penalty in case of failure.

County courts may order their surveyor's book to be inspected, and preserved among the records.

No survey without sworn chain carriers.

1796.

*Notice of survey-
ing must be gi-
ven.*

Entries void.

*Surveyor shall
not issue a plat
or certificate to
any but the ow-
ner.*

Exceptions.

Penalty.

*Money securities
for surveyor's
fees void.*

*How the penal-
ties may be reco-
vered.*

Repealing clause.

Commencement.

and sworn to measure justly and exactly, to the best of their knowledge, and to deliver a true account thereof to the surveyor, which oath every surveyor is hereby empowered and required to administer.

VIII. *And be it further enacted by the authority aforesaid,* That all entries for land, legally made, shall stand good, until notice given by the surveyor in writing, publicly affixed at the court-house of his county, on two successive court days; and where the party claiming such entry lives in another county, then in like manner in that county also, that he is ready to proceed to the survey thereof. And if the party claiming, his heirs or assigns, shall not within one month after such notice, attend the surveyor, with all necessaries for making such survey, and give him timely warning thereof, the entry or entries claimed by such party shall be void, as if the same had never been made.

IX. *And for preventing hasty and surreptitious grants, and avoiding controversies and expensive lawsuits, Be it further enacted by the authority aforesaid,* that no surveyor shall at any time issue or deliver any certificate, copy, or plat of land by him surveyed, except only to the person or persons for whom the same was surveyed, or to his, her, or their order, unless such person or persons shall refuse to pay the surveyor's fees for making such survey, to be proved by the sheriff's return, upon the surveyor's account delivered him to collect, that the party has no effects in his bailiwick whereupon he can levy the same, or unless such party shall have legally forfeited his or her right to the land entered for, to be proved by an authentic copy of the order of council, declaring such forfeiture, produced to the surveyor; and if any surveyor shall presume to issue any certificate, copy or plat as aforesaid, to any other than the person or persons entitled thereto, every surveyor so offending shall forfeit and pay to the party injured, his or her legal representatives or assigns, five hundred pounds of tobacco for every hundred acres of land contained in the survey, whereof a certificate, copy or plat shall be so issued, or shall be liable to the action of the party injured, at the common law, for his or her damages, at the election of such party.

X. *And be it further enacted by the authority aforesaid,* That no surveyor, for any fees due to him by virtue of his office, shall presume to take, directly or indirectly, in his own name or in the name of any other person in trust for him, any obligation, specialty, note or other security from any person whatsoever for the payment of any sum or sums of money in lieu of such fees; and that all specialties, notes or securities taken contrary to this act, shall be void, and no action or suit shall be maintained thereon. And if any action or suit shall be brought upon such specialty, note or security, the defendant may plead this act in bar thereof, and the plaintiff shall join issue upon such plea; and upon trial thereof the *onus probandi*, as to the consideration for which such specialty, note or security was given, shall lie upon the plaintiff.

XI. *And be it further enacted by the authority aforesaid,* That all the several penalties and forfeitures by this act laid, given, or inflicted, shall and may be recovered with costs by action of debt or information, in any court of record of this dominion, wherein such penalty shall be cognizable; and that all and every other act and acts, clause and clauses, heretofore made for or concerning any matter or thing within the purview of this act, shall be and are hereby repealed.

XII. *And be it further enacted by the authority aforesaid,* That this act shall commence and be in force from and immediately after the tenth day of June, which shall be in the year of our Lord one thousand seven hundred and fifty-one.

ACTS OF 1763, CHAPTER III. BODY OF LAWS, page 410.

[An ACT for further continuing and amending the act entitled 'an act for the better regulating & collecting certain officer's fees, and for other purposes therein mentioned.]

SEC. III. PROVIDED always, and be it further enacted by the authority aforesaid, That from and after the passing of this act all and every surveyor of

V. YEAR OF THE COMMONWEALTH.

389

lands shall be resident in the county whereof he is surveyor during the time he shall continue in office, under the penalty of forfeiting ten pounds current money for every month he shall reside out of the same; one moiety of which shall be to the king, his heirs and successors, for the better support of this government and the contingent charges thereof, and the other moiety to the informer.

1796.

ACTS OF 1772, CHAP. XII. CHAN. REV. page 23.

(An act to amend an act entitled an act directing the duty of Surveyors of Land.)

I. Whereas many inconveniencies have arisen from the attention of surveyors to the variation of the magnetic needle, in resurveying lands which were formerly surveyed, when the variation was very different from what it is now, and many mistakes and much confusion may arise in comparing future surveys with the present: For remedy whereof, Be it enacted by the governor, council, and burgesses of this present general assembly, and it is hereby enacted by the authority of the same, that from and after the first day of June, in the year of our lord one thousand seven hundred and seventy-three, every surveyor of this colony shall, under the penalty of five pounds, return all his or their original or new surveys, and protract and lay down their plats by the true and not by the artificial or magnetic meridian, and shall moreover express and declare in or on the plat and return of each survey by him or them taken or made, the true quantity or degree of the variation aforesaid, and whether it be east or west.

Recital.

In new surveys plats to be laid down by the true not artificial meridian, with the variation.

II. Provided always, That when any surveyor shall be called upon or ordered to resurvey any lands that may have been surveyed before the commencement of this act, such surveyor shall or may resurvey such lands according to the present mode of surveying by the magnetic meridian, but shall nevertheless, under the penalty aforesaid, return and certify in his plat, the quantity or degree of the variation of the magnetic needle from the true meridian, at the time of making such resurvey, and shall also, in the said plat and return, certify (where the same can be done) the quantity or degree of variation between the original lines of such former survey from the true meridian aforesaid.

In re-surveys, the present mode by the magnetic meridian may be observed, but the variation shall be certified.

III. And be it further enacted, That the penalties inflicted by this act may be recovered by any person or persons, who shall sustain any damage by the surveyor's failing to comply with the directions of this act, who will inform or sue for the same by action of debt, bill, plaint, or information, in any court of record within this dominion.

Penalty how to be recovered and appropriated.

ACTS OF 1775, CHAP. IV. CHAN. REV. page 30.

(Ordinance of Convention.)

Whereas, the inhabitants of the county of Fincastle and the district of West Augusta, although long possessed of their lands, under surveys, entries, or orders of council, have few of them obtained patents for the same, which have been obstructed without any default in them, who, having performed what is required on their part, have an equitable interest in their lands, and ought to share in the representation in conventions and committees, with other land holders in this colony: Be it therefore declared and ordained, that every free white man who at the time of elections for delegates or committee-men, in the said county or district respectively, shall have been for one year preceding in possession of twenty-five acres of land with a house and plantation thereon, or one hundred acres of land without a house or plantation in such county or district, claiming an estate for life at least in the said land, in his own right, or in right of his wife, shall have a vote, or be capable of being chosen at such elections respectively, although no legal title in the land shall have been conveyed to such possessor.

Qualifications of electors in Fincastle in West Augusta.

1796.

ACTS OF 1776, CHAP. II. CHAN. REV. page 34.

(Ordinance of Convention.)

Territorial limits; cession to co-terminous States; future governments west of Mount Allegheny how to be established. No purchases from Indian natives, but for the republic.

XII. The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potowmack and Pohomoke, with the property of the Virginia shores or stands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. The western and northern extent of Virginia shall in all other respects stand as fixed by the charter of king James the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the courts of Great Britain and France in the year one thousand seven hundred and sixty three; unless by act of legislature, one or more territories shall hereafter be laid off, and governments established, westward of the Allegheny mountains: And no purchase of lands shall be made of the Indian natives but on behalf of the public, by authority of the general assembly.

ACTS OF 1776, CHAP. V. CHAN. REV. page 37.

(Ordinance of Convention.)

Common law of England, general statutes in aid thereof prior to 4. Jac. I, in force.

VI. And be it further ordained, That the common law of England, all statutes or acts of parliament made in aid of the common law prior to the fourth year of the reign of king James the first, and which are of a general nature, not local to that kingdom, together with the several acts of the general assembly of this colony now in force, so far as the same may consist with the several ordinances, declarations, and resolutions of the general convention, shall be the rule of decision, and shall be considered as in full force, until the same shall be altered by the legislative power of this colony.

ACTS OF 1777, CHAP. II. CHAN. REV. page 60.

(An Act for raising a supply of money for public exigencies.)

Settlements on the western waters, subject to taxation, and quantity of each ascertained.

V. Whereas great numbers of people have settled on waste and ungranted lands situate on the western waters, to which they have not been able to procure legal titles, and the general convention of Virginia, on the twenty-fourth day of June, one thousand seven hundred and seventy-six, did "resolve that all such settlers upon unappropriated lands, to which there was no prior just claim, should have the pre-emption or preference to a grant of such lands," and it is just and reasonable that the lands in their possession thus secured to them should contribute by tax to the common charge, and a mode established for fixing the quantity of their claims, where the same hath not been ascertained, by regular survey: It is therefore further enacted, that all persons who on or before the said twenty-fourth day of June one thousand seven hundred and seventy-six, had bona fide settled themselves, or at his or her charge had settled others, upon any waste and ungranted lands on the said western waters, and had not by regular entry, survey or contract, ascertained the quantity of their claim, shall be allowed for every family so settled, four hundred acres of land, to include such settlement, or such lesser quantity as the person entitled thereto respectively shall, at the time of the first assessment, declare to the assessors, he or she desires to hold; and the assessors of the hundred shall proceed to assess the pound rate upon the proprietor for such lands in manner hereinbefore mentioned, entering in their return the name of every such person, and the quantity of

1796

land allotted for or chosen by him or her as aforesaid, and the assessment shall continue to be made from year to year, according to the quantity so fixed, during the term of six years, or until regular surveys shall be made, and grants obtained for the same. But where any such settlers shall have ascertained the quantity of their land by regular survey or contract, in such case, upon their producing the same to the assessors, they shall be assessed for such quantity in the same manner as if a patent had been obtained for the same. But nothing in this act shall be construed in any manner to affect or prejudice the prior claim or title of any person whatsoever in or to any such lands, nor to affect any person residing within the territory northward of the latitude of the line usually called Mason and Dixon's line, and in dispute between this commonwealth and that of Pennsylvania, unless the legislature of the said commonwealth of Pennsylvania shall have imposed taxes on their citizens within the said disputed territory, and then only, to such amount as shall have been by them imposed on such their citizens.

IX. And that lands may not be granted on, or subject to any feudal tenure, and to prevent the danger to a free state from perpetual revenue, *Be it enacted,* that all lands within this commonwealth shall henceforward be exempted and discharged from the payment of all quitrents, except only the lands in that tract of country or territory between Rappahannock and Potowmack rivers commonly called the Northern Neck; and that the abolition of quitrents may operate to the equal benefit of all the citizens of the commonwealth, the owners of all lands within the said territory, subject to the payment of an annual quitrent of two shillings sterling per hundred acres to the proprietor of the said Northern Neck, shall be allowed the sum of two shillings and six pence current money for every hundred acres, and so in proportion for a greater or lesser quantity, out of the sum which shall be respectively assessed on such lands, so long as their payment of quitrents thereon shall continue, which allowance and discount the commissioners and assessors of the tax are hereby empowered and required to make accordingly, and the commissioners of the tax in each county within the said territory shall make out a list of all such deductions made in their county, and transmit the same to the commissioners of the county of Frederick annually, to be by them delivered to the sheriff of the said county, and such sheriff is hereby required to collect and levy of and upon the proprietor of the said territory for the time being, the said pound rate of two shillings for every pound of the amount of the said deductions, and account for and pay the same to treasurer, in like manner, and subject to the same penalty and proceedings, as is hererein before directed for accounting for and paying the other taxes.

Quit-rents abolished, with an exception.

X. *And be it further enacted,* That the late auditor or deputy auditor general in this commonwealth, shall, on or before the twentieth day of March next, transmit to the commissioners of each county, not being within the said territory of the Northern Neck, a certificate at what time the last quitrents were accounted for in such county by the sheriff; and the late receiver or deputy receiver general, shall within the same time transmit to such commissioners a true copy from his book of the account with each sheriff who hath not fully paid, and a certificate to what time the quitrents have been so fully paid in each county, and upon receiving such accounts and certificates the commissioners in each county shall proceed to call the respective persons who have been sheriffs thereof, within the time the quitrents are unaccounted for, to an account for what they have received thereof in each year, and to move for judgment in the general court or county court against such sheriff or his deputy or deputies, and his or their securities, or their respective executors or administrators, for the penalty of their respective bonds where they shall fail to account, or for what shall appear due on such account, if they respectively fail to pay the same, and such court shall give judgment accordingly; provided, that ten days previous notice be given of such motion. And having adjusted such accounts with the sheriffs, the commissioners of each county shall make out a list of all

1796.

arrears of quitrents due from any persons for lands therein to the twenty-ninth day of September, one thousand seven hundred and seventy-four, and deliver the same to the sheriff or collector, to be collected, levied, accounted for and paid in like manner, and subject to the same penalty and proceedings for neglect, as are provided in the case of the taxes hereby imposed. And the treasurer shall pay to the auditor and receiver general what the auditors of public accounts shall certify to be a reasonable satisfaction for such copies and certificates.

XI. *Provided always,* That no lands situate on the Western Waters shall be subject to the payment of such arrears.

Revised code,
1779, page 90,
chap. 22, sec. 1.
Preamble.

SECTION 1. WHEREAS the various and vague claims to unpatented lands under the former and present government, previous to the establishment of the commonwealth's land-office, may produce tedious and infinite litigation and disputes, and in the mean time purchasers would be discouraged from taking up lands upon the terms lately prescribed by law, whereby the fund to be raised in aid of the taxes for discharging the public debt, would be in a great measure frustrated; and it is just and necessary, as well for the peace of individuals as for the public weal, that some certain rules should be established for settling and determining the rights to such lands, and fixing the principles upon which legal and just claimers shall be entitled to sue out grants; to the end that subsequent purchasers and adventurers may be enabled to proceed with greater certainty and safety, *Be it enacted by the general assembly,* that all surveys of waste and unappropriated land made upon any of the western waters before the first day of January, one thousand seven hundred and seventy-eight, and upon any of the eastern waters at any time before the end of this present session of assembly, by any county surveyor commissioned by the masters of William and Mary college, acting in conformity to the laws and rules of government then in force, and founded either upon charter, importation rights duly proved and certified according to ancient usage, as far as relates to indented servants and other persons not being convicts, upon treasury rights for money paid the receiver general duly authenticated, upon entries upon the western waters, regularly made before the twenty-sixth day of October, in the year one thousand seven hundred and sixty-three, or on the eastern waters at any time before the end of this present session of assembly, with the surveyor of the county for tracts of land not ex-

What surveys
declared valid.

ceeding four hundred acres, according to act of assembly upon any order of council, or entry in the council books, and made during the time in which it shall appear either from the original or any subsequent order, entry, or proceedings in the council books, that such order or entry remained in force, the terms of which have been complied with, or the time for performing the same unexpired, or upon any warrant from the governor for the time being for military service, in virtue of a proclamation either from the king of Great Britain, or any former governor of Virginia, shall be, and are hereby declared good and valid; but that all surveys of waste and unpatented lands made by any other person, or upon any other pretence whatsoever, shall be, and are hereby declared null and void, provided that all officers or soldiers, their heirs or assigns claiming under the late governor Dinwiddie's proclamation of a bounty in lands to the first Virginia regiment; and having returned to the secretary's office surveys made by virtue of a special commission from the president and masters of William and Mary college, shall be entitled to grants thereupon on payment of the common office fees; that all officers and soldiers, their heirs or assigns, under proclamation warrants for military service, having located lands by actual surveys, made under any such special commission, shall have the benefit of their said locations, by taking out warrants upon such rights, re-surveying such lands according to law, and thereafter proceeding according to the rules and regulations of the land-office. All and every person or persons, his, her, or their heirs or assigns, claiming lands upon any of the before recited rights, and under surveys made as herein before mentioned, against which no caveat shall have been legally entered, shall, upon the plats and certificates of such surveys being returned into the land-office, together with the rights, entry, order, warrant or authentic copy thereof, upon which they were respectively founded, be entitled to a grant or grants for the same, in manner and form herein after directed.

SEC. 2. *Provided*, That such surveys and rights be returned to the said office within twelve months, next after the end of this present session of assembly, otherwise they shall be and are hereby declared forfeited and void.

SEC. 3. All persons, their heirs or assigns, claiming lands under the charter and ancient custom of Virginia,

1796.

Page 91.

Rev. code 1779
page 91, chap.
12, sec. 2.
Proviso.

Ibid.

1796.

Under what
rights and in
what manner
grants shall be
made.

upon importation rights as before limited, duly proved and certified in any court of record before the passing of this act: those claiming under treasury rights for money paid the receiver general duly authenticated, or under proclamation warrants for military service, and not having located and fixed such lands by actual surveys as herein before mentioned, shall be admitted to warrants, entries and grants for the same, in manner directed by the act of assembly entitled "an act for establishing a land office, and ascertaining the terms and manner of granting waste and unappropriated lands," upon producing to the register of the land office the proper certificates, proofs or warrants, as the case may be, for their respective rights, within the like space of twelve months after the end of this present session of assembly, and not afterwards. All certificates of importation rights proved before any court of record according to the ancient custom, and before the end of this present session of assembly, are hereby declared good and valid; and all other claims for importation rights not so proved, shall be null and void: and where any person before the end of this present session of assembly hath made a regular entry according to act of assembly, with the county surveyor for any tract of land not exceeding four hundred acres upon any of the eastern waters which hath not been surveyed, or forfeited according to the laws and rules of government in force at the time of making such entry, the surveyor of the county where such land lies shall, after advertising legal notice thereof, proceed to survey the same accordingly, and shall deliver to the proprietor a plat and certificate of survey thereof within three months; and if such person shall fail to attend at the time and place so appointed for making such survey, with chain carriers and a person to mark the lines, or shall fail to deliver such plat and certificate into the land office according to the rules and regulations of the same, together with the auditor's certificate of the treasurer's receipt for the composition money hereafter mentioned, and pay the office fees, he or she shall forfeit his or her right and title; but upon performance of these requisitions, shall be entitled to a grant for such tract of land as in other cases.

Rev. code 1779
page 91, chap.
12, sec. 3.

SEC. 4. *And be it enacted*, That all orders of council or entries for land in the council books, except so far as such orders or entries respectively have been carried into

xecution by actual surveys in manner herein before mentioned, shall be and are hereby declared void and of no effect ; and except also a certain order of council for a tract of sunken grounds, commonly called the Dismal Swamp, in the south eastern part of this commonwealth, contiguous to the North-Carolina line, which said order of council with the proceedings thereon and the claim derived from it, shall hereafter be laid before the general assembly for their further order therein.

No claim to land within this commonwealth for military services founded upon the king of Great-Britain's proclamation, shall hereafter be allowed, except a warrant for the same shall have been obtained from the governor of Virginia, during the former government as before mentioned ; or where such service was performed by an inhabitant of Virginia, or in some regiment or corps actually raised in the same ; in either of which cases the claimant making due proof in any court of record, and producing a certificate thereof to the register of the land office, within the said time of twelve months, shall be admitted to a warrant, entry and grant for the same, in the manner herein before mentioned ; but nothing herein contained shall be construed or extend to give any person a title to land for service performed in any company or detachment of militia.

SEC. 5. And whereas great numbers of people have settled in the country upon the western waters, upon waste and unappropriated lands, for which they have been hitherto prevented from suing out patents, or obtaining legal titles by the king of Great Britain's proclamation, or instructions to his governors, or by the late change of government ; and the present war having delayed until now the opening of a land office, and the establishment of any certain terms for granting lands, and it is just that those settling under such circumstances should have some reasonable allowance for the charge and risk they have incurred, and that the property so acquired should be secured to them : *Be it therefore enacted*, That all persons who, at any time before the first day of January, in the year one thousand seven hundred and seventy-eight, have really and *bona fide* settled themselves or their families, or at his, her or their charge have settled others upon any waste or unappropriated lands on the said western waters, to which no other person hath any

1796.

Rights claimed
under certain
orders of council,
&c. royal
proclamation
declared void.

Rev. code, 1779
page 91, chap.
12, sec. 4.

Provision for
settlers on the
western waters.

1796.

legal right or claim, shall be allowed for every family so settled, four hundred acres of land, or such smaller quantity as the party chooses, to include such settlement. And where any such settler hath had any survey made for him or her, under any order of the former government, since the twenty-sixth day of October, in the year one thousand seven hundred and sixty-three, in consideration of such settlement for less than four hundred acres of land, such settler, his or her heirs may claim, and be allowed as much adjoining waste and unappropriated land, as together with the land so surveyed will make up the quantity of four hundred acres.

Rev. code, 1779
page 91, chap.
12, sec. 5.

And for families settled
in villages or townships.

SEC. 6. And whereas several families for their greater safety have settled themselves in villages or townships, under some agreement between the inhabitants of laying off the same into town-lots, to be divided among them, and have from present necessity cultivated a piece of ground adjoining thereto in common: *Be it enacted*, That six hundred and forty acres of land, whereon such villages and towns are situate, and to which no other person hath a previous legal claim, shall not be entered for or surveyed; but shall be reserved for the use and benefit of the said inhabitants until a true representation of their case can be made to the general assembly, that right and justice may be done therein; and in the mean time there shall be allowed to every such family in consideration of their settlement, the like quantity of land as is herein allowed to other settlers adjacent or convenient to their respective villages or towns, and to which no other person hath by this act the right of pre-emption, for which said quantities to be adjusted, ascertained and certified by the commissioners, to be appointed by virtue of this act in manner hereinafter directed.—The proper claimants shall be respectively entitled to entries with the surveyor of the county wherein the land lies, upon producing to him certificates of their rights from the said commissioners of the county, duly attested, within twelve months next after the end of this present session of assembly, and not afterwards; which certificate the said surveyor shall record in his books, and then return them to the parties, and shall proceed to survey the lands so entered according to law; and upon due return to the land office of the plats & certificates of survey, together with the certificates from the said commissioners of the rights by

settlement, upon which the entries were founded, grants may and shall issue to them and their heirs or assigns, in manner before directed ; and if any such settlers shall desire to take up a greater quantity of land than is herein allowed them, they shall, on payment to the treasurer of the consideration money, required from other purchasers, be entitled to the pre-emption of any greater quantity of land adjoining to that allowed them in consideration of settlement, not exceeding one thousand acres, and to which no other person hath any legal right or claim. And to prevent doubts concerning settlements, *it is hereby declared*, that no family shall be entitled to the allowance granted to settlers by this act, unless they have made a crop of corn in that country, or resided there at least one year since the time of their settlement. All persons who since the said first day of January, in the year one thousand seven hundred and seventy-eight, have actually settled on any waste or unappropriated lands on the said western waters, to which no other person hath a just or legal right or claim shall be entitled to the pre-emption of any quantity of land not exceeding four hundred acres, to include such settlement at the state price to other purchasers ; and all those who before the said first day of January, in the year one thousand seven hundred and seventy-eight, had marked out or chosen for themselves any waste or unappropriated lands, and built any house or hut, or made other improvements thereon, shall also be entitled to the pre-emption upon the like terms of any quantity of land to include such improvements, not exceeding one thousand acres, and to which no other person hath any legal right or claim ; but no person shall have the right of pre-emption for more than one such improvement, provided they respectively demand and prove their right to such pre-emption before the commissioners for the county, to be appointed by virtue of this act within eight months, pay the consideration money, produce the auditor's certificate for the treasurer's receipt for the same, take out their warrants from the register of the land office within ten months, and enter the same with the surveyor of the county, within twelve months next after the end of this present session of assembly, and thereafter duly comply with the rules and regulations of the land-office. All locations made by officers and soldiers upon the land of actual settlers shall be void ; but the said

1796.
}

1796.

officers, soldiers, or their assignees, may obtain warrants on producing the commissioners certificate of their several rights, and locate their claims on other waste and unappropriated lands. To prevent the locations of those claiming under warrants for pre-emption, from interfering with such as claim under certificates for settlements, and to give due preference to the latter, so far as respects their rights to tracts of land not exceeding four hundred acres, the register of the land office shall particularly distinguish all pre-emption warrants by him issued, and no county surveyor shall admit any such warrant to be entered or located in his books, before the expiration of ten months as aforesaid. And where any such warrant shall not be entered and located with the county surveyor within the before mentioned space of twelve months, the right of pre-emption shall be forfeited, and the lands therein mentioned may be entered for by any other person holding another land warrant; but such pre-emption warrant may nevertheless be located upon any other waste or unappropriated lands, or upon the same lands where they have not in the mean time been entered for by some other.

Rev. code, 1779
page 92, chap.
12, sec. 6.

SEC. 7. *And be it further enacted,* That all persons claiming lands, and suing out grants upon any such surveys heretofore made, either under entries with the surveyor of any county, or under any order of council or entry in the council books, for which rights have not formerly been lodged in the secretary's office; and also those suing out grants for tracts of lands upon the western waters not exceeding four hundred acres herein allowed them in consideration of their settlements, or under former entries with the county surveyor for lands upon the eastern waters, shall be subject to the payment of the usual composition money under the former government, at the rate of ten shillings sterling for every hundred acres, to be discharged in current money, at the rate of thirty-three and one third per centum exchange, before the grant issues, and to no other charge or imposition whatsoever, save the common office fees. And to all such persons, their heirs or assigns, who having title to land under the former government, had not only surveyed the same, but had lodged their certificates of survey, together with their rights, in the secretary's office, and although no caveat hath been entered, have not ob-

tained patents, grants shall issue in consideration thereof, upon the payment of the office fees only.

SEC. 8. And whereas it has been represented to the general assembly, that upon lands surveyed for sundry companies by virtue of orders of council, many people have settled without specific agreement, but yet under the faith of the terms of sale publicly offered by the said companies, or their agents, at the time of such settlements, who have made valuable improvement thereon: *Be it enacted and declared*, that all persons so settled upon any unpatented lands, surveyed as before mentioned, except only such lands as before the settlement of the same, were notoriously reserved by the respective companies for their own use, shall have their titles confirmed to them by the members of such companies, or their agents, upon payment of the price at which such lands were offered for sale when they were settled, together with interest thereon from the time of the respective settlements, provided they compromise their claims with the said companies, or lay them before the commissioners for their respective counties, to be appointed by virtue of this act, and have the same tried and determined by them in manner hereinafter directed: and provided also, that where any such survey contains more than four hundred acres, no one settler shall be entitled to a greater quantity than three hundred acres, unless he takes the whole survey to include his settlement, and leave the remainder in one entire and convenient piece where the same is practicable.

SEC. 9. And whereas the claims of various persons to the lands herein allowed to the inhabitants in consideration of their settlements, and of those who, by this act, are entitled to pre-emption at the state price, as well as of the settlers on the lands surveyed for sundry companies by orders of council as aforesaid, may occasion numerous disputes, the determination of which depending upon evidence, which cannot, without great charge and trouble, be collected, but in the neighbourhood of such lands, will be most speedily and properly made by commissioners in the respective counties: *Be it enacted*, that the counties on the western waters shall be allotted into districts, to wit: the counties of Monongalia, Yohogania and Ohio, into one district; the counties of Augusta, Botetourt and Greenbrier, into one district; the counties of Washington and Montgomery, into one other district;

1796.

Rev. code,
1779, page 92,
chap. 12, sec.
7.

Agreements between companies claiming under orders of council & purchasers from them, regulated

Rev. Code,
1779, page 92,
chap. 12, sec. 8

1796

Commissioners
for adjusting &
determining
claims to lands
on the western
waters how ap-
pointed, their
oath, duty,
power, modes
and rules of
proceeding.

Page 93.

and the county of Kentucky shall be another district : for each of which districts, the governor, with the advice of the council, shall appoint four commissioners under the seal of the commonwealth, not being inhabitants of such district, (any three of whom may act) to continue in office eight months from the end of this present session of assembly, for the purpose of collecting, adjusting, and determining such claims, and four months thereafter for adjusting the claims of settlers on lands surveyed for the aforesaid companies. Every such commissioner, before he enters on the duties of his office, shall take the following oath of office : "I, A. B. do swear, that I will well and truly serve this commonwealth in the office of a commissioner for the district of _____ for collecting, adjusting and settling the claims, and determining the titles of such persons as claim lands in the said district, in consideration of their settlements ; of such as claim pre-emption to any lands therein, and also of such settlers as claim any lands surveyed by order of council for sundry companies, according to an act of general assembly, entitled 'an act for adjusting and settling the titles of claimers to unpatented lands under the former and present government, previous to the establishment of the commonwealth's 'land-office ;' and that I will do equal right to all manner of people without respect of persons ; I will not take by myself, nor by any other person, any gift, fee or reward, for any matter done, or to be done by virtue of my office, except such fees or salary as the law shall allow me ; and finally, in all things belonging to my said office, I will faithfully, justly and truly, according to the best of my skill and judgment, do equal and impartial justice, without fraud, favour, affection or partiality : so help me God." Which oath shall be administered by any of the said commissioners to the first of them in nomination, who shall be present, and then by him to the others. The said commissioners shall have power to hear and determine all titles claimed in consideration of settlements to lands, to which no person hath any other legal title, and the rights of all persons claiming pre-emption to any lands within their respective districts, as also the rights of all persons claiming any unpatented lands surveyed by order of council for sundry companies, by having settled thereon under the faith of the terms of sale publicly offered by such

1796.

companies or their agents, and shall immediately upon receipt of their commissions, give at least twenty days previous notice by advertisements, at the fairs, churches, meeting-houses and other public places in their district, of the time and place at which they intend to meet, for the purpose of collecting, hearing and determining the said claims and titles, requiring all persons interested therein to attend and put in their claims, and may adjourn from place to place, and time to time, as their business may require; but if they should fail to meet at any time to which they shall have adjourned, neither their commission, nor any matter depending before them shall be thereby discontinued, but they shall proceed to business when they do meet, as if no such failure had happened. They shall appoint and administer on oath of office to their clerk; be attended by the sheriff, or one of the under sheriffs of the county; be empowered to administer oaths to witnesses or others, necessary for the discharge of their office; to punish contempts, enforce good behaviour in their presence, and award costs in the same manner with the county courts; they shall have free access to the county surveyor's books, and may order the same to be laid before them, at any time or place of their sitting, and shall pay to such surveyor out of the fees received by them for certificates, the sum of three pounds for every day he shall attend, and to the sheriff for the like attendance two pounds for each day's attendance. In all cases of disputes upon claims for settlement, the person who made the first actual settlement, his or her heirs or assigns shall have the preference. In all disputes for the right of pre-emption for improvements made on the land, the persons, their heirs or assigns respectively, who made the first improvement, and the persons to whom any right of pre-emption on account of settlement or improvements shall be adjudged, shall fix the quantity at their own option at the time of the judgment, so as not to exceed the number of acres respectively allowed by this act, or to interfere with the just rights of others. The clerk shall keep exact minutes of all the proceedings of the commissioners, and enter the names of all the persons to whom either lands for settlement, or the right of pre-emption, as the case is, shall be adjudged, with their respective quantities and locations, and also the names of all such persons to whom titles shall be adjudged for

1796. lands within the surveys made by order of council for any company, with the quantity of acres adjudged, and in what survey; and if the same is only part of such survey, in what manner it shall be located therein, the name or stile of the company, and the price to be paid them, with the time from which the same is to bear interest. Upon application of any person claiming a right to any lands in virtue of this act, and complaining that another pretends a right in opposition thereto, the said clerk shall issue a summons stating the nature of the plaintiff's claim, and calling on the party opposing the same to appear at a time and place certain therein to be named, and shew cause why a grant of the said lands may not issue, or a title be made to the said plaintiff: the said summons shall be served on the party by the sheriff of the county where he resides, or wherein he may be found; and such service being returned thereon, and the party appearing, or failing to appear, the commissioners may proceed to trial, or for good cause shewn, may refer such trial to a further day. The clerk shall also have power, at the request of either party, to issue *subpoenas* for witnesses, to appear at the time and place of trial, which shall be had in a summary way, without pleadings in writing, and the court in conducting the said trial, in all matters of evidence relative thereto, and in giving judgment, shall govern themselves by such rules and principles of law or equity, as are applicable to the case, or would be the rule of evidence, or of decision, were the same before the ordinary courts of law or equity; save only as far as this act shall otherwise have specially directed. Judgment when rendered shall be final, except as hereinafter excepted, and shall give to the party in whose favor it is, a title against all others who were parties to the trial; and if after such judgment rendered, the party against whom it is, shall enter the said lands forcibly, or forcibly detain the same, it shall be lawful for the said commissioners, or any one of them, or any justice of the peace for the county, to remove such force in like manner as if it were committed on lands holden by grant actually issued. The said commissioners shall deliver to every person to whom they shall adjudge lands for settlement, a certificate thereof under their hands, and attested by the clerk, mentioning the number of acres, and the time of settlement, and describing as near as may be, the particular location, noting also therein the quantity of adjacent land

1796

to which such person shall have the right of pre-emption. And to every other person to whom they shall adjudge the right of pre-emption to any lands, they shall in like manner deliver a certificate, specifying the quantity and location of such land, with the cause for pre-emption, with a memorandum for the information of the party in each certificate of the last day on which the lands therein respectively mentioned can be entered with the county surveyor: for every hundred acres of land contained within the said certificates, the party receiving the same, shall pay down to the commissioners the sum of ten shillings, besides a fee of ten shillings to the clerk for each certificate so granted; and the said certificates produced within the times herein before respectively limited to the surveyor of the county, or to the register of the land-office, with the auditor's certificate of the treasurer's receipt for the payment due on the pre-emption, as the nature of the case may require, shall entitle the person respectively receiving them, to an entry and survey, or a warrant for the said lands, in such way and on such terms as are herein before prescribed. And to prevent frauds or mistakes, the said commissioners immediately upon having completed the business in their district, shall transmit to the register of the land-office, under their hands, and attested by the clerk, an exact list or schedule in alphabetical order, of all such certificates by them granted, and a duplicate so signed and attested to the county surveyor for their information. They shall in like manner, and upon payment of the same fees, deliver to every person to whom they shall adjudge a title to any unpatented land, surveyed for any company by order of council, a certificate mentioning the number of acres to which they have adjudged the title, what particular survey the same is in, and for what company made, the price to be paid such company, and the date from which the same is to bear interest; and where there is a greater quantity of land contained in the survey, describe as near as may be the manner the land to which they have adjudged title, shall be laid off and bounded; and shall also immediately upon having completed the business in their district, transmit to the clerk of the general court, under their hands, and attested by their clerk, a list or schedule in alphabetical order, containing exact copies of all such certificates by them granted, to remain in the said clerk's

1796

Revised code,
1779, page 94,
chap. 12, sec. 9.
In what cases
rights adjudged
to certain clai-
mants forfeited

Allowances to
commissioners,
clerk and the-
riff.

What judg-
ment may be
reversed by the
general court,
and how.

office for the information of the said companies, and as evidence and proof of the respective titles.

SEC. 10. *Provided nevertheless*, That if the parties, their heirs or assigns, to whom such title shall have been adjudged, shall not within six months at farthest from the time of their respective judgments in their favor, pay or tender to the company to whom the same is due, or their agent, the price and interest so fixed by the said commissioners, the title of every person so failing, shall be forfeited, and shall be from thenceforward to all intents and purposes null and void; any thing herein to the contrary thereof notwithstanding. The said commissioners for every day they shall be actually employed in the execution of their office, shall be allowed the sum of eight pounds each; they shall be accountable for all the money they shall have received upon issuing certificates as aforesaid, except the fee to the clerk, and shall settle a fair account upon oath with the auditor, and receive from the treasury whatever balance may appear to them due thereon, or pay to him any balance which shall be by them due to the commonwealth. The clerk and sheriff shall receive for their services the fees heretofore allowed by law for the like services in the county court, and the witnesses the same allowance for their attendance, to be paid by the party, and collected in like manner as is directed in the ordinary cases of the same nature, and the clerk shall have the same power of issuing executions as the clerks of the county courts, provided that the clerk shall not be allowed any further or other fee for entering and issuing a certificate, than is herein before mentioned. But as by this summary mode of proceeding, some persons at a great distance may not have timely notice, and may be unable to appear in support of their claims; for remedy whereof, *Be it enacted*, that no grant shall issue upon any of the claims determined by the said commissioners, until the first day of December, in the year one thousand seven hundred and eighty; and in the mean time any such person injured by their determination, his, or her heirs or assigns, may enter a *caveat* against a grant thereupon, until the matter shall be heard before the general court, and may petition the said general court, to have his or her claim considered; and upon its being proved to the court that he or she labored under such a disability at the time of the meeting of the commissioners

thereupon, the court shall grant him or her a hearing in a summary way; and if it shall appear upon trial that the petitioner's claim is just, such court may reverse the former determination, and order a grant to issue for such land, or any part thereof, on the terms herein before mentioned, to the person to whom they shall adjudge the same.

1796.

SEC. 11. *And be it further enacted*, That all claims for lands upon surveys under any order of council, or entry in the council books, shall by the respective claimers be laid before the court of appeals, which shall meet for that purpose on the sixteenth day of December next, and shall adjourn from day to day until the business be finished; or if it be proved to the court that any such claimer is unable to attend and prosecute his claim, or for other just cause to them shewn, they may order such claim to be tried before them on some future day. All such claims shall be heard and determined in a summary way, without pleading in writing, upon such evidence as in the opinion of the court, the nature of the case may require; and no such claim shall be valid, but such only as shall be so heard and established by the said court of appeals, and on their certificate that any such claim hath been by them established, the register is hereby required to issue a warrant or grant thereupon, according to the nature of the case, and the rules and regulations of the land-office; and the attorney-general is hereby required to attend the said court on behalf of the commonwealth.

Revised Code,
1779, page 94,
chap. 12, sec. 10
Certain claims
to be laid before
the court of ap-
peals, and there
decided.

SEC. 12. *Provided always*, That nothing herein contained shall extend to officers, soldiers, or their assignees, claiming lands for military service. The register of the land office shall regularly record all land warrants issued by virtue of this act; they may be executed in one or more surveys, and may be exchanged or divided so as best to suit the purposes of the party, and shall remain in force until lands shall have been actually obtained for them, in the same manner with the warrants to be issued by virtue of the before recited act for establishing a land office. And when the said register shall make out a grant to any person or persons for lands due to him, her or them, by virtue of this act, he shall recite therein as the consideration, the rights and cause for which the same became due, according to an act of general assembly, passed in the year of our lord one thousand seven hundred

Revised Code,
1779, page 94,
chap. 12, sec. 11
Provido for of-
ficers, &c. re-
gister's duty in
recording land
warrants, and
making out the
grants.

1796.

and seventy-nine, entitled "an act for adjusting and settling the titles of claimers to unpatented lands, under the former and present government, previous to the establishment of the commonwealth's land office;" and if any part thereof is due in consideration of the ancient composition money, or the new purchase money paid to the commonwealth, the same shall be properly distinguished, and in every other respect the grant shall be drawn, and pass in the form and manner prescribed by the law for future grants of lands from the commonwealth.

Revised Code,
1779, page 94,
chap. 12, sec. 12

Proceedings
upon caveats
depending at
the revolution.

SEC. 13. And whereas at the time of the late change of government, many caveats against patents for lands which have been entered in the council office, were depending and undetermined: *Be it enacted*, that all such caveats, with the papers relating thereto, shall be removed to the clerk's office of the general court, there to be proceeded on and tried in the manner directed by law for future caveats; but the same shall be determined according to the laws in force at the time they were entered; and upon the determination of any such caveat, a grant shall issue in the name of the person to whom such land shall be adjudged, his or her heirs or assigns, upon producing to the register of the land office, within three months at farthest from the time of such judgment, an authentic copy thereof, together with the auditor's certificate of the treasurer's receipt for the ancient composition money due thereon, at the rate of exchange herein before mentioned; but where the person recovering had before paid rights into the secretary's office, a grant shall issue in consideration thereof upon payment of the office fees only.

Revised Code,
1779, page 94,
chap. 13, sec. 1
Revised.

Land office
constituted.

SEC. 14. Whereas there are large quantities of waste and unappropriated lands within the territory of this commonwealth, the granting of which will encourage the migration of foreigners hither, promote population, increase the annual revenue, and create a fund for discharging the public debt: *Be it enacted by the general assembly*, That an office shall be, and is hereby constituted for the purpose of granting lands within this commonwealth, into which all the records now in the secretary's office, of patents or grants for lands heretofore issued, with all papers and documents relating thereto, and all certificates of surveys of lands now in the said office, and not patented, shall be removed and lodged for their safe keeping:

and all future grants of lands shall issue from the said office in manner and form hereinafter mentioned. A register of the said land-office shall be appointed, from time to time, by joint ballot of both houses of assembly, who shall give bond with sufficient security to the governor or first magistrate of this commonwealth, in the penalty of fifty thousand pounds current money; shall hold his office during good behaviour, be entitled to receive such fees as shall hereafter be allowed by law, and shall have power to appoint a deputy and clerks to assist in executing the business of the said office, but shall nevertheless reside there himself. If any vacancy shall happen by the death, resignation, or removal of a register during the recess of the general assembly, the governor or first magistrate of the commonwealth, by and with the advice of the council, may appoint some other person giving bond and security in like manner, to act as register of the said office until the end of the next session of assembly. All copies of the records and other papers of the said office, or of the records and papers hereby directed to be removed from the secretary's office and lodged therein, duly attested by such register, shall be as good evidence as the originals would be.

1796.

A register of,
how appointed
and qualified.

Page 95.
Copies attested
by him, equi-
valent evidence
with originals.

SEC. 15. And whereas a certain bounty in lands hath been engaged to the troops on continental establishment, raised by the ordinances of convention or the laws of this commonwealth, and to the troops upon Virginia establishment: *Be it enacted*, That the officers and soldiers of the said troops, as well as the officers and soldiers to whom a bounty in lands may, or shall be hereafter allowed by any law of this commonwealth, shall be entitled to the quantity of waste or unappropriated lands respectively engaged to them by such laws, a commissioned officer or his heirs, upon certificate from any general officer of the Virginia line, or the commanding officer of the troops on the Virginia establishment, as the case may be, and a non-commissioned officer or soldier, or his heirs, upon certificate from the colonel or commanding officer of the regiment or corps to which they respectively belonged, that such officer or soldier hath served the time required by law, or hath been slain or dies in the service, distinguishing particularly the time such officer or soldier hath served, and in what regiment or corps such service hath been performed, or death happened; and upon ma-

Revised Code,
1779, page 95,
chap 13, sec 2.
Rights to lands
offered as boun-
ties to officers
and soldiers,
how to be au-
thenticated.

1796.

How titles to
unappropriated
lands may be
acquired.

Revised Code,
1779, page 95,
chap. 13, sec. 3.

Warrants for
surveys how to
be obtained, lo-
cated and exe-
cuted.

king proof before any court of record within this com-
monwealth by the person's own oath, or other satisfacto-
ry evidence of the truth and authenticity of the said cer-
tificate, and that the party had never before proved or
claimed his right to land for the service therein mention-
ed, which proof the clerk of the court before whom it
shall be made, is hereby empowered and required to en-
dorse and certify upon the original certificate, making an
entry or minute thereof in his order book, and recording
the same; and every county court shall annually, in the
month of October, send to the register's office a list of
all certificates granted by their respective county courts
upon any of the before mentioned rights, there to be re-
corded. And for creating a sinking fund in aid of the an-
nual taxes to discharge the public debt, *Be it enacted*,
That any person may acquire a title to so much waste and
unappropriated lands as he or she shall desire to pur-
chase, on paying the consideration of forty pounds for
every hundred acres, and so in proportion for a greater
or smaller quantity, and obtaining certificate from the
public auditors in the following manner: the considera-
tion money shall be paid into the hands of the treasurer,
who shall thereupon give to the purchaser a receipt for
the payment, specifying the purpose it was made for;
which being delivered to the auditors, they shall give to
such person a certificate thereof, with the quantity of land
he or she is thereby entitled to.

SEC. 16. *And be it enacted*, That upon application of
any person or persons, their heirs or assigns, having ti-
tle to waste or unappropriated lands, either by military
rights or treasury rights, and lodging in the land office a
certificate thereof, the register of the said office shall
grant to such person or persons a printed warrant under
his hand and the seal of his office, specifying the quantity
of land and the rights upon which it is due, authorising
any surveyor duly qualified according to law, to lay off
and survey the same, and shall regularly enter and record
in the books of his office, all such certificates and the war-
rants issued thereupon, which warrants shall be always
good and valid until executed by actual survey, or ex-
changed in the manner hereinafter directed; provided
that no warrant on treasury rights, other than pre-emp-
tion warrants, to be obtained by virtue of this act, shall
be granted or issued before the fifteenth day of October

next ; nor shall the surveyor of any county admit the entry or location of any warrant on treasury rights, except pre-emption warrants, in his books, before the first day of May next. Any person holding a land warrant upon any of the before mentioned rights, may have the same executed in one or more surveys, and in such case, or where the lands on which any warrant is located shall be insufficient to satisfy such warrant, the party may have the said warrant exchanged by the register of the land-office for others of the same amount in the whole, but divided as best may answer the purposes of the party, or entitle him to so much land elsewhere as will make good the deficiency. A surveyor shall be appointed in every county, to be nominated, examined, and certified able, by the president and professors of William and Mary college, and if of good character, commissioned by the governor, with a reservation in such commission to the said professors, for the use of the college, of one-sixth part of the legal fees, which shall be received by such surveyor, for the yearly payment of which, he shall give bond with sufficient security to the president and masters of the said college. He shall hold his office during good behaviour ; shall reside within his county ; and before he shall be capable of entering upon the execution of his office, shall before the court of the same county, take an oath and give bond with two sufficient sureties to the governor and his successors, in such sum as he, with advice of his council, shall have directed for the faithful execution of his office. All deputy surveyors shall be nominated by their principals, who shall be answerable for them, examined and certified able by the president and masters of the said college, and if of good character, commissioned by the governor, and shall thereupon be entitled to one half of all fees received for services performed by them respectively, after deducting the proportion thereof due to the college. If any principal surveyor shall fail to nominate a sufficient number of deputies to perform the services of his office in due time, the court of the county shall direct what number he shall nominate, and in case of failure, shall nominate for him. And if any deputy surveyor or any other on his behalf, and with his privity, shall pay or agree to pay, any greater part of the profits of his office, sum of money in gross, or other valuable consideration to his principal for his recommendation or interest

1796.

Surveyor for every county & his deputy, how to be appointed & qualified ; penalty upon, for sale of the office ; his own warrants how to be located ; duty of, in several instances.

1796.

in procuring the deputation, such deputy and principal shall be thereby rendered forever incapable of serving in such office ; it shall not be necessary for the present chief or deputy surveyors of the several counties duly examined, commissioned, and qualified according to the laws heretofore in force, to be again commissioned and qualified under the directions of this act, nor in cases now depending before any court within this commonwealth. Every person having a land warrant founded on any of the before mentioned rights, and being desirous of locating the same on any particular waste and unappropriated lands, shall lodge such warrant with the chief surveyor of the county wherein the said lands or the greater part of them lie, who shall give a receipt for the same if required. The party shall direct the location thereof so specially and precisely, as that others may be enabled with certainty, to locate other warrants on the adjacent residuum ; which location shall bear date the day on which it shall be made, and shall be entered by the surveyor in a book to be kept for that purpose, in which there shall be left no blank leaves or spaces between the different entries. And if several persons shall apply with their warrants at the office of any surveyor at the same time to make entries, they shall be preferred according to the priority of the dates of their warrants, but if such warrants be dated on the same day, the surveyor shall settle the right of priority between such persons by lot. And every surveyor shall, at the time of making entries for persons not being inhabitants of his county, appoint a time for surveying their land, and give notice thereof in writing to the persons making the same. And if on such application at his office, the surveyor shall refuse to enter such location, under pretence of a prior entry for the same lands made by some other persons, he shall have a right to demand of the said surveyor a view of the original of such prior entry in his book, and also an attested copy of it. But it shall not be lawful for any surveyor to admit an entry for any land without a warrant from the register of the land office, except in the particular case of certificates from the commissioners of the county for tracts of land, not exceeding four hundred acres, allowed in consideration of settlements, according to an act of assembly, entitled "an act for adjusting and settling the titles of claimers to unpatented lands, under the present and former government,

previous to the establishment of the commonwealth's land-office." No entry or location of land shall be admitted within the county and limits of the Cherokee Indians, or on the north-west side of the Ohio river, or on the lands reserved by act of assembly for any particular nation or tribe of Indians, or on the lands granted by law to Richard Henderson and company, or in that tract of country reserved by resolution of the general assembly for the benefit of the troops serving in the present war, and bounded by the Green river and south-east coast from the head thereof to the Cumberland mountains, with the said mountains to the Carolina line, with the Carolina line to the Cherokee or Tennessee river, with the said river to the Ohio river, and with the Ohio to the said Green river, until the further order of the general assembly. Any chief surveyor having warrant for lands, and desirous to locate the same on lands within his own county, shall enter such location before the clerk of the county, who shall return the same to his next court, there to be recorded, and the said surveyor shall proceed to have the survey made as soon as may be, and within six months at farthest, by some one of his deputies, or if he hath no deputy, then by any surveyor or deputy surveyor of an adjacent county, or his entry shall be void, and the land liable to the entry of any other person. Every chief surveyor shall proceed with all practicable dispatch, to survey all lands entered for in his office, and shall, if the party live within his county, either give him personal notice of the time at which he will attend to make such survey, or shall publish such notice by fixing an advertisement thereof on the door of the court house of the county on two several court days, which time so appointed shall be at least one month after personal notice given, or after the second advertisement so published; and if the surveyor shall accordingly attend, and the party, or some one for him, shall fail to appear at the time with proper chain carriers, and a person to mark the lines if necessary, his entry shall become void, and the land thereafter subject to the entry of any other person, and the surveyor shall return him the warrant, which may, notwithstanding, be located anew upon any other waste or unappropriated lands, or again upon the same lands where it hath not, in the mean time, been entered for by another person. Where the chief surveyor doth not

1796
}

1796.

mean to survey himself, he shall, immediately after the entry made, direct a deputy surveyor to perform the duty, who shall proceed as is before directed in the case of the chief surveyor.

The persons employed to carry the chain on any survey, shall be sworn by the surveyor, whether principal or deputy, to measure justly and exactly to the best of their abilities, and to deliver a true account thereof to such surveyor, and shall be paid for their trouble by the party for whom the survey is made. The surveyor at the time of making the survey shall see the same bounded plainly by marked trees, except where a water course or ancient marked line shall be the boundary; and shall make the breadth of each survey at least one-third of its length in every part, unless where such breadth shall be restrained on both sides by mountains unfit for cultivation, by water courses, or the bounds of lands before appropriated. He shall as soon as it can conveniently be done, and within three months at farthest after making the survey, deliver to his employer or his order, a fair and true plat and certificate of such survey, the quantity contained, the hundred (where hundreds are established in the county wherein it lies) the courses and descriptions of the several boundaries, natural and artificial, ancient and new, expressing the proper names of such natural boundaries, where they have any, and the name of every person whose former line is made a boundary; and also the nature of the warrant and rights on which such survey was made, and shall at the same time deliver the said warrant to the party. The said surveyor may, nevertheless, detain the said certificates and warrants until the payment of his fees. The said plats and certificates shall be examined and tried by the said principal surveyor, whether truly made and legally proportioned as to length and breadth, and shall be entered within three months at farthest after the survey is made, in a book well bound, to be provided by the court of his county, at the county charge. And he shall in the month of July in every year, return to the president and professors of William and Mary college, and also to the clerk's office of his county court, a true list of all surveys made by him or his deputies in the preceding twelve months, with the names of the persons for whom they were respectively made, and the quantities contained in each, there

V. YEAR OF THE COMMONWEALTH.

413

to be recorded by such clerk; and no person after the first day of May next, shall hold the office of clerk of a county court, and surveyor of a county; nor shall a deputy in either office act as deputy or chief in the other. Any surveyor, whether principal or deputy, failing in any of the duties aforesaid, shall be liable to be indicted in the general court, and punished by amercement or deprivation of his office, and incapacity to take it again, at the discretion of a jury, and shall moreover be liable to any party injured, for all damages he may sustain by such failure. Every county court shall once in every year, and oftener if they see cause, appoint two or more capable persons to examine the books of entries and surveys in possession of their chief surveyor, and to report in what condition and order the same are kept; and on his death or removal, shall have power to take the same into their possession, and deliver them to the succeeding chief surveyor. Every person for whom any waste or unappropriated lands shall be so located and laid off, shall within twelve months at farthest after the survey made, return the plat and certificate of the said survey into the land office, together with the warrant on which the lands were surveyed, and may demand of the register a receipt for the same; and on failing to make such return within twelve months as aforesaid, or if the breadth of his plat be not one-third of its length as before directed, it shall be lawful for any other person to enter a caveat in the said land office, against the issuing of any grant to him, expressing therein for what cause the grant should not issue; or if any person shall obtain a survey of lands to which another hath by law a better right, the person having such better right may in like manner enter a caveat, to prevent his obtaining a grant until the title can be determined; such caveat also expressing the nature of the right on which the plaintiff therein claims the said land. The person entering any caveat, shall take from the register a certified copy thereof, which within three days thereafter he shall deliver to the clerk of the general court, or such caveat shall become void; the said clerk on receiving the same shall enter it in a book, and thereupon issue a summons, reciting the cause for which such caveat is entered, and requiring the defendant to appear on the seventh day of the succeeding court, and defend his right; and on such process being returned executed,

1796.

Proceedings on
caveats.

the court shall proceed to determine the right of the cause in a summary way without pleadings in writing, empannelling and swearing a jury for the finding of such facts as are material to the cause, and are not agreed by the parties; and shall thereupon give judgment, on which no appeal or writ of error shall be allowed; a copy of such judgment, if it be in favor of the defendant, being delivered into the land office, shall vacate the said caveat; and if not delivered within three months, a new caveat may for that cause be entered against the grant; and if the said judgment be in favor of the plaintiff, upon delivering the same into the land office, together with a plat and certificate of the survey, and also producing a legal certificate of new rights on his own account, he shall be entitled to a grant thereof; but on failing to make such return and produce such certificates within six months after judgment so rendered, it shall be lawful for any other person to enter a caveat for that cause against issuing the grant; upon which subsequent caveats, such proceedings shall be had as are before directed in the case of an original caveat; and in any caveat where judgment shall be given for the defendant, the court shall award him his costs, and may compel the plaintiff in any caveat, if they think fit, to give security for costs, or on failure thereof may dismiss his suit; and in case the plaintiff in any such caveat shall recover, the court may, if they think it reasonable, award costs against the defendant; provided that where any lands surveyed upon a land warrant as aforesaid, shall, in consequence of any judgment upon a caveat, be granted to any other person than the party claiming under such warrant, such party shall be entitled to a new warrant from the register for the quantity of land so granted to another, reciting the original warrant and rights, and the particular cause of granting the new warrant. And to prevent confusion and mistakes in the application, exchange or renewal of warrants, the register of the land office is hereby directed and required to leave a sufficient margin in the record books of his office; and whenever any warrant shall be exchanged, renewed, or finally carried into execution by a grant, to note the same in the margin opposite to such warrant, with folio references to the grant, or other mode of application; and also to note in the margin opposite to each grant, the warrant or warrants, and survey on

which such grant is founded, with proper folio references to the books in which the same was recorded. All persons, as well foreigners as others, shall have right to assign or transfer warrants, or certificates of survey for lands; and any foreigner purchasing lands, may locate and have the same surveyed, and after returning a certificate of survey to the land office, shall be allowed the term of eighteen months either to become a citizen, or to transfer his right in such certificate of survey to some citizen of this, or any other of the United States of America. When any grant shall have been finally completed, the register shall cause the plat and certificate of survey on which such grant is founded, to be exactly entered and recorded in well bound books, to be provided for that purpose at the public charge. Due returns of the several articles herein before required being made into the land office, the register, within not less than six, nor more than nine months, shall make out a grant by way of deed-poll to the party having right, in the following form: "A. B. Esq. governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that in consideration of military service performed by C. D. to this commonwealth, &c. (or in consideration of military service performed by C. D. to the United American States, or in consideration of the sum of current money, paid by C. D. into the treasury of this commonwealth, &c.) there is granted by the said commonwealth unto the said C. D., a certain tract or parcel of land containing acres, lying in the county of and hundred of &c. (describing the particular bounds of the land and the date of the survey upon which the grant issues) with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said C. D. and his heirs forever. In witness whereof the said A. B. governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at on the day of in the year of our Lord and of the commonwealth A. B."

Upon which grant the said register shall endorse that the party hath title to the same; whereupon it shall be signed by the governor, and sealed with the seal of the commonwealth, and then entered of record at full length in

1796.

Warrants and
certificates of
survey transferable,

Form of grant,
to be signed,
sealed and re-
corded.

1796.

good and well bound books to be provided for that purpose at the public expence, and kept by the register, and being so entered, shall be certified to have been registered, and then be delivered together with the original certificate of survey, to the party or his order. Where a grant shall be made to the heir or assignee of a person claiming under any of the before mentioned rights, the material circumstances of the title shall be recited in such grant: and for preventing hasty and surreptitious grants, and avoiding controversies and expensive lawsuits, *Be it enacted*, That no surveyor shall at any time within twelve months after the survey made, issue or deliver any certificate, copy, or plat of land by him surveyed, except only to the person or persons for whom the same was surveyed, or to his, her, or their order, unless a caveat shall have been entered against a grant to the person claiming under such survey, to be proved by an authentic certificate of such caveat from the clerk of the general court produced to the surveyor; and if any surveyor shall presume to issue any certificate, copy or plat as aforesaid, to any other than the person or persons entitled thereto, every surveyor so offending shall forfeit and pay to the party injured, his or her legal representatives or assigns, fifty pounds current money for every hundred acres of land contained in the survey, whereof a certificate, copy, or plat shall be so issued, or shall be liable to the action of the party injured at the common law for his or her damages at the election of the party. Any person possessing high lands to which any swamps, marshes, or sunken grounds are contiguous, shall have the pre-emption of such swamps, marshes, or sunken grounds, for one year from and after the passing of this act; and if such person shall not obtain a grant for such swamps, marshes, or sunken grounds within the said year, then any other person may enter on and obtain a grant for the same in the like manner as is directed in the case of other unappropriated lands. But nothing herein contained shall be construed or extend to give liberty to any person to survey, take up, or obtain a grant for any swamps, marshes, or sunken grounds lying contiguous to the high lands of any *feme covert*, infant under the age of twenty-one years, person not being *compos mentis*, or person out of the commonwealth, according to the regulations of an act entitled "an act declaring who shall be deemed citi-

Method to obtain grants for vacant swamps &c contiguous to patented high lands.

zens of this commonwealth," but all such persons shall be allowed one year after the removal of their several disabilities for the pre-emption of such lands.

SEC. 17. And whereas through the ignorance, negligence, or fraud of surveyors, it may happen that divers persons now do, or may hereafter hold within the bounds expressed in their patents or grants, greater quantities of land than are therein mentioned: for quieting such possessions, preventing controversies, and doing equal justice to the commonwealth and its citizens, *Be it enacted*, That it shall not be lawful for any person to enter for, survey or take up, any parcel of land held as surplus in any patent or grant, except during the life-time of the patentee or grantee, and before any transference, conveyance, or other alienation shall have been made of the lands contained in such patent or grant, and until the party intending to enter and take up the same, shall have given one full year's notice to such patentee or grantee of such his intentions; and in case such patentee or grantee shall not within the year obtain rights and sue forth a patent for the surplus land by him held, it shall be lawful for the person who gave notice as aforesaid, upon producing a certificate from the clerk of due proof of such notice before the court of the county wherein such patentee or grantee resides, to demand from the register of the land office a warrant to the surveyor of the county wherein such lands lie, to re-survey at the proper charge of the person obtaining such warrant, the whole tract within the bounds of the patent or grant, and upon such persons returning into the land office a plat and certificate of such re-survey, together with the warrant on which it is founded, and obtaining and producing new rights for all the surplus land found within the said bounds, he may sue forth and obtain a new grant for such surplus, which shall be granted to him in the same manner as waste or unappropriated lands; but the former patentee or grantee may assign such surplus land in any part of his tract as he shall think fit in one entire piece, the breadth of which shall be at least one-third of the length; and in such new grant there shall be a recital of the original patent or grant, the re-survey of which the surplus was ascertained, and of other material circumstances.

SEC. 18. *Provided always*, That if upon notice given as aforesaid, the original patentee or grantee shall within

1796

Revised Code,
1779, page 97,
chap 13, sec 4.
And of surplus
lands within the
bounds of pa-
tents.

Revised Code,
1779, page 97,
chap. 13, sec. 5.

1796.
 Proviso for
 land holders
 unjustly vexed.

the year re-survey his tract, and it be thereupon found that he hath no more than the quantity of land expressed in his patent or grant with the allowance hereinafter mentioned, the party giving such notice shall be liable to pay all charges of such re-survey, for which he shall give sufficient security to the said patentee or grantee at the time of the notice, otherwise such notice shall be void and of no effect; and moreover for his unjust vexation, shall also be liable to an action upon the case at the suit of the party grieved, and that in all such new surveys, the patentee or grantee shall have an allowance at the rate of five acres in every hundred for the variation of instruments.

Revised Code,
 1779, page 97,
 chap. 13, sec. 6
 Page 98.
 Method of rec-
 tifying mistakes
 in bounds and
 obtaining in-
 clusive patents.

SEC. 19. *And be it enacted,* That where any person shall find any mistake or uncertainty in the courses or description of the bounds of his land, and desires to rectify the same, or shall hold two or more tracts of land adjoining to each other and is desirous to include them in one grant, he may in either case, having previously advertised his intentions and the time of application, at the door of the court-house on two several court days, and also having given notice to the owners of the adjoining lands, present a petition to the court of the county wherein such lands lie, reciting the nature and truth of the case, and such court may and is hereby empowered to order the surveyor of their county to re-survey such lands at the charge of the party, according to his directions and the original or authentic title papers, taking care not to intrude upon the possessions of any other person, and to return a fair plat and certificate of such re-survey into the said court, to be examined and compared with the title papers; and if such court shall certify that in their opinion such re-survey is just and reasonable, the party may return the same, together with his material title papers into the land office, and demand the register's receipt for them; and in case any caveat shall be entered against his obtaining a new grant upon such re-survey, the same proceedings shall be had therein as is directed in the case of other caveats; and the general court upon hearing the same may either prohibit such new grant or vacate the caveat, as to them shall seem just; but if no caveat shall be entered within six months after such return, or if a caveat shall be entered and vacated as aforesaid, the party upon producing new rights for whatever

V. YEAR OF THE COMMONWEALTH.

419

surplus land appears to be within the bounds, more than the before mentioned allowance of five acres for every hundred may sue out and obtain a new grant for such lands thereupon, in which shall be recited the dates and other material circumstances of the former title; and the title papers shall be delivered by the register to the new owner. The judges of the general court shall once in every year, and oftener if they see cause, appoint two or more capable persons to examine the record books and papers in the land office, and report in what condition and order they are kept, who shall compare all warrants of survey returned to the said office executed, with the list of those issued therefrom, and cancel all such as shall appear to have been properly executed or exchanged, an account of which shall be kept by the register, charging therein those issued, and giving credit for those cancelled as aforesaid. The treasurer for the time being shall annually enter into bond, with sufficient security to the governor, in the sum of one hundred thousand pounds, for the just and faithful accounting for according to law, all money which shall come to his hands by virtue of this act. And that the proprietors of lands within this commonwealth may no longer be subject to any servile, feudal or precarious tenure; and to prevent the danger to a free state from perpetual revenue, *Be it enacted*, that the reservation of royal mines, of quit-rents, and all other reservations and conditions in the patents or grants of land from the crown of England or of Great Britain, under the former government, shall be and are hereby declared null and void; and that all lands thereby respectively granted, shall be held in absolute and unconditional property to all intents and purposes whatsoever, in the same manner with the lands hereafter to be granted by the commonwealth by virtue of this act; and no petition for lapsed land shall be admitted or received for or on account of any failure or forfeiture whatsoever, alledged to have been made or incurred after the twenty-ninth day of September, in the year of our Lord one thousand seven hundred and seventy-five. *And be it further enacted*, that he or she shall be adjudged a felon, and not have the benefit of clergy, who shall steal, or by other means take from the possession or custody of another, any warrant from the register of the land office of this commonwealth, to authorize a survey of waste and unappropri-

1796.

General court to cause the land-office to be examined, & certain warrants &c. to be cancelled.

Treasurer to give bond to account for money received by virtue of this act.

Reservations & tenures in the royal grants abolished.

Stealing or forging a land warrant, felony.

1796.

ated lands ; or who shall alter, erase, or aid or assist in the alteration or erasement of any such warrant, or forge or counterfeit, or aid, abet or assist in forging or counterfeiting any written or printed paper, purporting to be such warrant ; or who shall transfer to the use of another, or for his or her own use, present or cause to be presented to the register for the exchange thereof, or to a surveyor for the execution thereof, any such warrant or paper purporting to be such warrant, knowing the same so transferred or presented for the exchange or the execution thereof to be stolen, or by other means taken from the possession or custody of another, or altered, or erased, or forged, or counterfeited ; and he or she shall be adjudged a felon, and not have the benefit of clergy, who shall falsely make or counterfeit, or aid, or abet, or assist in safely keeping or counterfeiting any instrument, stamping an impression of the figure and likeness of the seal officially used by the register of the land office, or who shall have in his or her possession or custody such instrument, and shall wilfully conceal the same, knowing it to be falsely made or counterfeited. So much of all former acts of assembly as concern or relate to the entering, taking up, or seating lands, or direct the mode of proceeding in any case provided for by this act, shall be and are hereby repealed.

ACTS OF 1779, MAY SESSION, CHAP. XXV. CHAN. REV. page 103.

(An Act for declaring and asserting the rights of this commonwealth, concerning purchasing lands from Indian natives.)

*Commonwealth's
exclusive right of
pre-emption from
Indians of lands
within its char-
tered limits as-
certained.*

I. To remove and prevent all doubt concerning purchases of land from the Indian natives, *Be it declared by the general assembly*, that this commonwealth hath the exclusive right of pre-emption from the Indians of all lands within the limits of its own chartered territory, as described by the act and constitution of government in the year one thousand seven hundred and seventy-six ; that no person or persons whatsoever have, or ever had, a right to purchase any lands within the same from any Indian nation, except only persons duly authorized to make such purchases on the public account, formerly for the use and benefit of the colony, and lately of the commonwealth ; and that such exclusive right of pre-emption will, and ought to be maintained by this commonwealth to the utmost of its power.

*Purchases for-
merly made from
Indians shall in-
ure to the com-
monwealth.*

II. *And be it further declared and enacted*, That every purchase of lands heretofore made by, or on behalf of the crown of England or of Great Britain, from any Indian nation or nations within the before mentioned limits, doth and ought to enure forever to and for the use and benefit of this commonwealth and to and for no other use or purpose whatsoever ; and that all sales and deeds which have been or shall be made by any Indian or Indians, or by any Indian nation or nations, for lands within the said limits, to or for the separate use of any person or persons whatsoever, shall be, and the same are hereby declared utterly void and of no effect.

SEC. 20. Whereas many officers and soldiers of the Virginia line, now in the continental army, may have claims to lands on the western waters, from settlements or improvements made thereon, and have it not in their power to attend the commissioners appointed to adjust and ascertain such claims within the time limited for that purpose : for remedy whereof, *Be it enacted*, that all officers and soldiers of the Virginia line, now in the continental army, shall be allowed twelve months from the time they resign or are discharged from the service, to ascertain their respective claims to lands by settlements or improvements before the court of the county wherein the lands they claim may be ; and such court is hereby empowered and required to hear and determine such claims in like manner as is prescribed for the commissioners of the several districts on the western waters.

1796.

October 1779.
Page 4, chap. 2.
in original only
the title in rev.
code, 1779,
page 108, chap.
2

Further time
allowed to offi-
cers and soldiers
to ascertain
their claims to
lands.

ACTS OF 1779, OCTOBER SESSION, CHAP. XXI. CHAN. REV. page III.

(An act for more effectually securing to the officers and soldiers of the Virginia line, the lands reserved to them, for discouraging present settlements on the north-west side of the Ohio river, and for punishing persons attempting to prevent the execution of land-office warrants.)

I. Whereas all the lands lying between the Green river and the Tennessee river, from the Alleghany mountains to the Ohio river, except the tract granted unto Richard Henderson, esq. and company, have been reserved for the officers and soldiers of the Virginia line, on continental and state establishment, to give them choice of good lands, not only for the public bounty due to them for military service, but also in their private adventures as citizens ; and no person was allowed by law to enter any of the said lands, until they shall have been first satisfied, and it is now represented to the general assembly that several persons are, notwithstanding, settling upon the lands so reserved ; whereby the said officers and soldiers may be in danger of losing the preference and benefit intended for them by the legislature : *Be it enacted by the general assembly*, That every person hereafter settling upon the lands reserved for the officers and soldiers as aforesaid, or who having already settled thereon, shall not remove from the said lands within six months next after the end of this present session of assembly, shall forfeit all his or her goods and chattels to the commonwealth ; for the recovery of which, the attorney for the state in the county of Kentucky for the time being, is hereby required immediately after the expiration of the said term, to enter prosecution by way of information in the court of the said county on behalf of the commonwealth, and on judgment being obtained, immediately to issue execution and proceed to the sale of such goods and chattels ; and if the person or persons so prosecuted shall not remove from off the said lands in three months after prosecution so entered, the said attorney shall certify to the governor the name or names of the person or persons so refusing to remove, who, with the advice of the council may, and he is hereby required to issue orders to the commanding officer of the said county, or to any other officer in the pay of this state, to remove such person or persons, or any others that may be settled thereon, from off the said lands, by force of arms, except such as were actually settled prior to the first day of January, one thousand seven hundred and seventy-eight.

Preamble.

Penalty on settlers who shall not evacuate the reserved lands ; and how recoverable.

1796.
 Revised Code,
 1779, page 112,
 chap. 21, sec. 2.
 Proportions of
 officers, soldi-
 ers and sailors
 ascertained.

Rights of de-
 cendants shall de-
 velop on their
 heirs, &c.

SEC. 21. [II.] And whereas no law of this common-wealth hath yet ascertained the proportions or quantity of land to be granted at the end of the present war to the officers of the Virginia line on continental or state establishment, or to the officers of the Virginia navy, and doubts may arise respecting the particular quantity of land due to the soldiers and sailors from the different terms of their enlistments: *Be it enacted*, that the officers who shall have served in the Virginia line on continental establishment, or in the army or navy upon state establishment to the end of the present war, and the non-commissioned officers, soldiers and sailors upon either of the said establishments, their heirs or legal representatives, shall respectively be entitled to and receive the proportion and quantities of land following, that is to say: every colonel, five thousand acres; every lieutenant-colonel, four thousand five hundred acres; every major four thousand acres; every captain, three thousand acres; every subaltern, two thousand acres; every non-commissioned officer who having enlisted for the war, shall have served to the end thereof, four hundred acres; and every soldier and sailor under the like circumstances, two hundred acres; every non-commissioned officer who having enlisted for the term of three years shall have served out the same, or to the end of the present war, two hundred acres; and every soldier and sailor under the like circumstances, one hundred acres; every officer of the navy the same quantity of land as an officer of equal rank in the army. And where any officer, soldier or sailor shall have fallen or died in the service, his heirs or legal representatives shall be entitled to, and receive the same quantity of land as would have been due to such officer, soldier or sailor respectively, had he been living.

III. And whereas although no lands were allowed by law to be entered or warrants to be located on the north-west side of the Ohio river, until the farther order of the general assembly, several persons are notwithstanding removing themselves to and making new settlements on the lands upon the north west side of the said river, which will probably bring on an Indian war with some tribes still in amity with the United American States, and thereby involve the commonwealth in great expence and bring distress on the inhabitants of our western frontier: *Be it declared and enacted*, That no person so removing to and settling on the said lands on the north-west side of the Ohio river, shall be entitled to or allowed any right of pre-emption or other benefit whatever, from such settlement or occupancy; and the governor is hereby desired to issue a proclamation, requiring all persons settled on the said lands immediately to

Settlements on
 the north west
 side of Ohio re-
 probated & pro-
 hibited, with an
 exception.

V. YEAR OF THE COMMONWEALTH.

425

remove therefrom, and forbidding others to settle in future, and moreover, with the advice of the council, from time to time, to order such armed force as shall be thought necessary to remove from the said lands such person or persons as shall remain on or settle contrary to the said proclamation: *Provided*, that nothing herein contained shall be construed in any manner to injure or affect any French, Canadian or other families or persons heretofore actually settled in or about the villages near or adjacent to the posts reduced by the forces of this State.

1796.

SEC. 22. [IV.] And whereas various reports have been industriously circulated by evil minded and designing men of a combination to hinder by force and violence the execution and survey of legal land warrants, whereby many people have been deterred from purchasing unappropriated land upon the south-east side of the Ohio river within this commonwealth, and the receipt of considerable sums of money at the treasury thereby prevented, to the injury of the public credit, and tending to destroy all confidence in the laws of the land: *Be it further enacted*, That all and every person or persons who shall by force or violence, or by threats of force or violence, attempt to hinder or prevent the execution of any warrant from the register of the land office upon waste and unappropriated lands, or who shall by force or violence, or by threats of force or violence, attempt to hinder, restrain, or prevent any surveyor, chain-carriers, markers, or other persons necessarily employed therein, from laying off, marking, or bounding any waste or unappropriated land according to law, by virtue of such warrant, and also all and every person or persons aiding, abetting, or assisting in, or accessory to such force or violence, shall, upon conviction thereof forfeit and lose his, her, or their title to all ungranted land, which he, she or they may, or shall have acquired by settlement, pre-emption right, land-office warrant, or any other means whatsoever, and shall moreover suffer twelve months imprisonment without bail or mainprize, and be rendered ineligible and incapable of being appointed to, or holding any office of trust or profit, civil or military, within this commonwealth for the space of seven years. And all justices of the peace and other civil officers, are hereby strictly enjoined and required to suppress all such force or violence, and to cause the offenders to be apprehended and brought to justice; and all and every person or persons rescuing or attempting to rescue any such offender, shall be deemed, and are hereby declared accessories, and subject to the same penalties and punishment as the principal.

Ibid, section 4.
Penalty for violent opposition to the execution of certain land warrants.

Civil officers to suppress force.

1796

Revised Code,
1779, page 113,
chap. 27, sec. 1.
Rights for mi-
litary service
how to be au-
thenticated.

SEC. 23. *Be it enacted by the general assembly, That* whereas doubts have arisen concerning the manner of proving rights for military service under the proclamation of the king of Great-Britain in the year one thousand seven hundred and sixty-three, whereby great frauds may be committed : *Be it declared and enacted, That* no person, his heirs or assigns, other than those who had obtained warrants under the former government, shall hereafter be admitted to any warrant for such military service, unless he, she or they, produce to the register of the land-office within eight months after the passing of this act, a proper certificate of proof made before some court of record within the commonwealth, by the oath of the party claiming, or other satisfactory evidence, that such party was *bona fide* an inhabitant of this commonwealth at the time of passing the said recited act, or that the person having performed such military service was an officer or soldier in some regiment or corps (other than militia) actually raised in Virginia before the date of the said proclamation, and had continued to serve until the same was disbanded ; had been discharged on account of wounds or bodily infirmity, or had died in the service, distinguishing particularly in what regiment or corps such service had been performed, discharge granted, or death happened, and that the party had never before obtained a warrant or certificate for such military service : provided that nothing in this act shall be construed in any manner to affect, change or alter the title of any person under a warrant heretofore issued.

Revised Code,
1779, page 113,
chap. 27, sec. 2.
Commissioners
for adjusting
claims to unpa-
tented lands,
their powers
prorogued, with
directions to
them and the
register con-
cerning war-
rants to be issu-
ed on credit.

SEC. 24. And whereas the time limited in the before recited act to the commissioners for adjusting and settling the claims to unpatented lands within their respective districts may be too short for that purpose : *Be it further enacted, That* all the powers given to the said commissioners by the said recited act, shall be continued and remain in force for and during the further term of two months, from and after the expiration of the time prescribed by the said act, and no longer. And where it shall appear to the said commissioners that any person being an inhabitant of their respective districts, and entitled to the pre-emption of certain lands, in consideration of an actual settlement, is unable to advance the sum required for the payment of the state price previous to the issuing of a warrant for surveying such land, the said

commissioners shall certify the same to the register of the land office, who shall thereupon issue such pre-emption warrant to the party entitled thereto, upon twelve months credit for the purchase money at the state price from the date of the warrant: the said register shall keep an exact account of all such warrants issued upon credit, and shall not issue grants upon surveys made thereupon until certificates are produced to him from the auditors of public accounts of the payment of the purchase money respectively due thereon into the treasury; and if the same shall not be paid within the said term, the warrant, survey and title founded thereon, shall be void, and thereafter any other person may obtain a warrant, entry and grant for such land in the same manner as for any other waste and unappropriated land: provided that nothing herein contained shall be construed to extend to any person claiming right to the pre-emption of any land for having built an house or hut, or made any improvements thereon other than an actual settlement as described in the said recited act. No certificate of right to land for actual settlement, or of pre-emption right, shall hereafter be granted by the said commissioners, unless the person entitled thereto hath taken the oath of fidelity to this commonwealth, or shall take such oath before the said commissioners, which they are hereby empowered and directed to tender and administer, except only in the particular case of the inhabitants of the territory in dispute between this commonwealth and that of Pennsylvania, who shall be entitled to certificates upon taking the oath of fidelity to the United States of America.

SEC. 25. *And be it further enacted,* That all persons, their heirs or assigns, claiming lands by virtue of any order of council, upon any of the eastern waters, under actual surveys made by the surveyor of the county in which the land lay, may, upon the plats and certificates of such surveyors being returned into the land office, together with the auditor's certificate of the treasurer's receipt for the composition money, of thirteen shillings and four pence per hundred acres, due thereon, obtain grants for the same according to the rules and regulations of the said office, notwithstanding such surveys or claims have not been laid before the court of appeals. And all other claims for lands upon surveys, made by a county surveyor duly qualified, under any order of council, shall by

1796.

Page 114.

Revised Code,
1779 page 114
chap. 23, sec. 3.
Upon what certificates and terms, grants of lands surveyed by orders of council, may be obtained.

1796

their respective claimers be laid before the court of appeals at their next sitting, which shall proceed thereupon in the manner directed by the before recited act. Any person claiming right to land surveyed for another before the establishment of the commonwealth's land-office, may enter a caveat, and proceed thereupon in the same manner as is directed by the act of assembly for establishing the said office ; and upon recovering judgment shall be entitled to a grant upon the same terms, and under the same conditions, rules and regulations as are prescribed by the said act in the case of judgments upon other caveats, upon producing to the register a certificate from the auditors of the treasurer's receipt for the composition money, of thirteen shillings and four pence per hundred acres due thereon.

Revised Code,
1780, page 122,
chap. 9, sec. 1.
Time allowed
for returning
surveys.

SEC. 26. Whereas the time fixed by an act entitled "an act for adjusting and settling the titles of claimers to unpatented lands under the present and former government, previous to the establishment of the commonwealth's land office," for surveying and returning surveys to the land office, upon entries made with the surveyor of a county before the twenty-sixth day of June, one thousand seven hundred and seventy-nine, for lands lying upon the eastern waters, and for returning the plats of legal surveys made upon the western waters under the former government, and exchanging military warrants granted under the royal proclamation of one thousand seven hundred and sixty-three, and not yet executed, will shortly expire, and many persons be thereby deprived of the benefit of such warrants and surveys : *Be it therefore enacted*, that all persons having such warrants, shall be allowed until the first day of July, one thousand seven hundred and eighty-one, to exchange such warrants ; that the like time shall be allowed for returning such surveys to the land office to such who were entitled to land for military service, for which certificates have not yet been obtained.

Revised Code,
1780, page 122,
chap. 9, sec. 2.
Further time
allowed to the
western com-
missioners.

SEC. 27. And whereas the time limited in the act for explaining and amending the said recited act to the commissioners for adjusting and settling the claims to unpatented lands within their respective districts, has been found too short for that purpose : *Be it therefore enacted*, that all the powers given to the said commissioners, except the commissioners for the county of Kentucky, by

any act or acts of assembly, shall be continued and remain in force for and during the farther term of twelve months.

1796

SEC. 28. *And be it further enacted*, That the further time of eighteen months be given to all persons who may obtain certificates from the said commissioners for pre-emptions, on their obtaining warrants from the register of the land office to enter the same with the surveyor of the respective counties in which their claims were adjusted.

Rev. code 1780
page 122, chap
9, sec. 4.
Further time
to enter war-
rants on pre-
emption certi-
ficates with the
surveyor.

SEC. 29. And to the end that pre-emption certificates heretofore granted by the commissioners of any district, and not returned to the register's office for want of time, or other impracticability, may not be lost to the holders thereof, *Be it enacted*, that where such pre-emption certificates may have been, or may hereafter be lost out of the owner's possession, he or she, upon a certificate from a court of record of such loss, which shall be granted upon satisfactory proof being made to such court, shall be entitled to receive from the register a warrant thereupon, in the same manner as he or she might have done upon the original certificate; that the further time of twelve months after the passing of this act, shall be allowed to such persons to return the said certificates to the register's office for obtaining a warrant, and four months thereafter to enter the same with the surveyor of the county; which entries shall be good and valid as though they had been entered within the time heretofore prescribed by the said recited act.

Revised code,
1780, page 123
chap. 9, sec. 5.
Further time
to return pre-
emption certi-
ficates, and pro-
viding in case
of their loss.

SEC. 30. And whereas many warrants from the register may have been, or may hereafter be casually lost: *Be it enacted*, that upon satisfactory proof thereof being made before any court of record, the owner shall obtain from such court a certificate, which shall authorise the register to issue a duplicate of such warrant, which shall have the same force as the original would have had; but such original shall be void, unless a grant shall be actually issued upon such original before application for the duplicate.

Revised code,
1780, page 123
chap. 9, sec. 6.
And of lost
warrants.

SEC. 31. And whereas some doubts have arisen upon the construction of the acts directing the granting of warrants for land due for military service under the king of Great-Britain's proclamation, in the year one thousand seven hundred and sixty-three: *It is hereby*

Revised code,
1780, page 123
chap. 9, sec. 7.

1796.
 Regulations of
 warrants for
 military service
 under the pro-
 clamnation of
 1762.

declared, that no officer, his heirs, executors, administrators or assigns, shall be entitled to a warrant of survey for any other or greater quantity of land than was due to him, her or them, in virtue of the highest commission or rank in which such officer had served, nor in virtue of more than one such commission for services in different regiments or corps; nor shall any non-commissioned officer or soldier be entitled to a bounty for land under the said proclamation, for his service in more than one regiment or corps.

Revised code,
 1780, page 123
 chap. 9, sec. 8.
 Register not
 to issue grants
 for certain
 claims.

SEC. 32. *And it is further declared,* That the register shall not issue to any person or persons whatever, his or their heirs or assigns, a grant for land for more than one service, as above described, nor to those who have received warrants for services since October, one thousand seven hundred and sixty-three, notwithstanding a warrant or warrants may have been heretofore issued, and the land surveyed, unless the claimant shall within six months from the end of this present session of assembly, produce to the said register the auditor's certificate for the payment of the state price of forty pounds per hundred for the quantity of land in such warrant or warrants; and if such money is not so paid, that then the said warrants or surveys shall be to all intents and purposes void: and that the register may be able to comply with the law, he is hereby directed to make out and keep an alphabetical list of all military warrants issued under the former as well as the present government, in case of any assignment, marking therein, the name of every assignor; and the several surveyors with whom military warrants obtained under the former government have been lodged or located, are directed to transmit to the register in the month of November next, or before that time, a list of all such warrants.

Revised code,
 1780, page 132
 chap. 12, sec. 1.

Caveats allowed
 against the
 judgment of the
 commissioners.

SEC. 33. Whereas it is represented to this present general assembly, that from the inclemency of the weather during the sitting of the commissioners appointed to adjust and settle the titles of claimers to unpatented lands, many witnesses were prevented from attending the said commissioners, and the parties at whose instance they were summoned, lost the benefit of their testimony, and thereby failed to support their claims: for remedy whereof, *Be it enacted,* That it shall and may be lawful for any person, his or her heirs or assigns aggrieved or

V. YEAR OF THE COMMONWEALTH.

429

injured by the determination of the said commissioners, to enter a caveat against a grant thereupon, until the matter shall be heard before the general court; and that any person or persons, who may hereafter in like manner be aggrieved by the determination of any commissioners who shall sit for the purpose aforesaid, shall be entitled to the same mode of redress as above mentioned, and may petition the said court to have his or her claim considered, and upon its being proved that he or she laboured under such disability at the time of the meeting of the said commissioners thereupon, the court shall grant him or her a hearing in a summary way; and if it shall appear that the petitioner's claim is just, the court may reverse the former determination, and order a grant to issue for such land, or any part thereof, to the person to whom they shall adjudge the same, on the terms prescribed by an act, entitled "an act for adjusting and settling the titles of claimers to unpatented lands under the present and former governments, previous to the establishment of the commonwealth's land-office."

1796.

ACTS OF 1781, MAY SESSION, CHAP. IX. CHAN. REV. page 140.

(An act preventing a discontinuance of the general court and suspending the proceedings of certain courts in particular cases.)

I. Whereas the additional session of the general court which ought by law to have been holden on the second Tuesday in the month of June, in the present year of our lord one thousand seven hundred and eighty-one, was omitted to be so holden from an invasion of this commonwealth, and without some legislative provision a discontinuance of the said court may thereby be produced: And whereas amidst those distractions and exertions which are caused and called for by a state of war, no leisure is left for questions of a nature merely private: *Be it enacted*, that no discontinuance shall take place in the general court, or in any proceeding depending therein or belonging thereto, by the failure to hold the additional session aforesaid at the time aforesaid, but in every construction or adjudication in the said court or elsewhere, the adjournment from the session of the said court which was in the month of March in the present year of our lord one thousand seven hundred and eighty-one, to the said additional session, shall be taken and deemed as if it had been an adjournment to the session to be holden in the month of October in the same year, or to a session holden under a proclamation by the governor pursuant to an act of general assembly, entitled "an act for giving certain powers to the governor and council, and for punishing those who shall oppose the execution of laws," according as the one or the other shall be first holden.

No discontinuance of courts or proceedings.

II *And be it further enacted*, That until a declaration shall be made by the general assembly to the contrary, neither the court of appeals, the high court of chancery, the general court, nor any county court, shall hear or determine any matter, cause, or thing, except mere pleas of the commonwealth, private questions brought on by consent, suits instituted for the division of estates, contestations of wills, and such other cases in which the law requires not a declaration or bill in equity to be filed; but the said courts shall still be open for the issuing of dedimus, for the examination of witnesses, writs of *ne exeat*,

Proceedings of courts suspended, (removed Nov. 1781, chap. 12.) Particular cases excepted.

1796.

Suspension of issuing patents (removed Nov. 1781, chap. 29. Time taken out of the act of limitation.

republica, injunction, and habeas corpus, de homine replegiando, for the institution of suits in perpetuam rei memoriam, and for no other purpose whatsoever. And as the issuing of patents whilst there is so great difficulty in entering caveats may produce much injustice, It is further enacted, that the register shall not issue any patent until the term of six months shall have elapsed after such declaration as aforesaid shall take place, and any patent so issued shall be void. Any caveat may be entered against the issuing a patent at any time within the said six months. Of the time between the first day of January in the year aforesaid, to the last day of that session of the general assembly, at which the foregoing suspension of judiciary proceedings shall be removed, no account shall be made in any computation upon the act of limitations.

May, 1781, page 141, chap. 18.

The title only. But to be found in the original copy.

May 1781.

Page 15.

Certain county courts authorized to grant claims to poor persons.

SEC. 34. Whereas a number of poor persons with their families have removed to the Kentucky country, and by reason of great hardships they have encountered, and expences incurred by them in their removal to that distant place and the parts adjacent, they have become unable to advance ready money to pay the state price of vacant lands : for relief of such poor persons, *Be it enacted by the general assembly*, that the courts of the counties of Lincoln, Fayette and Jefferson be, and they are hereby empowered and required to issue their orders to the surveyors of the said counties respectively, commanding them to lay out and survey for such poor settlers, any tract of land in the said counties, or either of them, which shall be vacant : and the surveyor shall proceed with all possible expedition to survey such vacant land, and make out plats and certificates for the same in the usual manner ; and the register of the land office and all other officers of government shall proceed in the usual manner for completing the titles of such lands as in similar cases : *Provided*, that no person shall be entitled to lands under this act, except such as are now actually resident in that country or the parts adjacent ; and the masters and mistresses of families there at this time, and have not acquired a right to land there, either in law or equity, and are too poor to procure lands in the ordinary method. And the courts of the said counties are hereby required diligently to enquire into the circumstances aforesaid, and to grant no order of survey to any person except as before excepted. No order of survey under this act, shall exceed the quantity of four hundred acres for each family, and the surveyor shall lay out the same in one tract, the greatest length of which shall not exceed the breadth by more than one third. All persons claiming under this act besides the usual office fees, shall pay into the public treasury after the rate of twenty shillings

Provided they be actual residents & masters or mistresses of families.

Not to exceed 400 acres. Survey of, how to be proportioned.

Consideration money what, & how to be paid.

in specie, or the value thereof in paper money, for every hundred acres, within two years and a half from the date of the survey, as the state price; and in default of making such payment, all right and interest to such surveys shall be forfeited to the commonwealth, and the lands subject to the claim of any person who shall pay the said state price for the same, and prosecute by way of caveat in the manner prescribed by law. All orders of survey and proceedings contrary to the true intent and meaning of this act, shall be void and of no effect or avail to the persons claiming under them. This act shall continue to be in force two years, and no longer.

1796.

Penalty for failing to make payment.

SEC. 35. And whereas the commissioners appointed for the purpose of carrying into execution the before cited act, were discontinued in the district of Kentucky, whereby many good people of this commonwealth were prevented from proving their rights of settlement and pre-emption in due time, owing to their being engaged in the public service of this country: *Be it therefore enacted*, That the county courts in which such lands may lie, are hereby empowered and required to hear and determine such disputes as have not heretofore been determined by commissioners acting in that country under the act of assembly, taking for their guide and direction the acts of assembly whereby the commissioners were governed, and the register of the land office is hereby empowered and directed to grant titles on the determination of such courts in the same manner as if the commissioners had determined the same.

Rev. Code 1781 page 142 chap. 22, sec. 3. County courts in Kentucky settlement to hear and determine disputes unfinished.

ACTS OF 1781, NOVEMBER SESSION, CHAP. V. CHAN. REV. page 143.

(An ACT to empower the Register of the Land Office to appoint a Deputy on the western waters.)

WHEREAS under the present mode established by law for obtaining grants for waste and unappropriated lands within this commonwealth, many of the good citizens thereof are subject to great inconvenience and expence in travelling to the land office in order to produce the necessary title papers for obtaining grants on the same; for remedy whereof, *Be it enacted by the general assembly*, that the register of the land office shall and he is hereby empowered to appoint a deputy, for whose good conduct he shall be accountable, to reside in some convenient part of the Kentucky country, whose business it shall be to receive the plats and certificates of all surveys made within the counties of Lincoln, Jefferson and Fayette, together with the title papers upon which they are founded, to be by him registered in a book to be kept for that purpose; all which plats and certificates of survey, as well as all such title papers, the said deputy register shall once in every six months, or oftener if convenient, transmit to the principal land office, to be proceeded on in the same manner as if the entry had been there first made. And when titles are completed upon

Preamble.

Deputy to be appointed to reside in the Kentucky country.

His duty.

1796.

the said plats and certificates of survey, the register shall forward the same to his deputy, who shall, after making a proper entry thereof in his office, deliver them out to the proprietors.

See May 1781, ACTS OF 1781, NOVEMBER SESSION, CHAP. XII. CHAN. REV. page 144, chap. 9.

(An ACT to remove the suspension of the superior courts, and to alter the terms of holding the same.)

Preamble.

Courts to proceed as before.

Future terms of the superior courts.

Court of appeals may sit beyond their term. In that case the chancery term when to commence.

I. WHEREAS by an act passed the last session of assembly, the county, as well as other courts, were suspended under certain exceptions; and such suspension being now unnecessary and improper; *Be it therefore enacted*, that the said courts shall hear and determine any matter, cause, or thing, in like manner as they could or might have done before the passing of the said act. That the sessions of the general court shall hereafter begin on the first day of April and October in every year, if not Sunday, and then on the Monday thereafter. That a court of appeals shall hereafter be holden on the twenty-ninth, or when that shall happen to be on Sunday, on the thirtieth day of April and October in every year. That the two sessions of the court of chancery shall hereafter begin on the fifth day of May and November in every year, if not Sunday, and then on the Monday following.

II. *Provided always, and be it further enacted*, That the court of appeals shall have power to hold their court any number of days exceeding the term now fixed by law, as they may think necessary to go through the business depending before them, in which case the court of chancery shall stand adjourned to, and commence on the day next succeeding the rising of the said court, if not Sunday, and then the day following.

ACTS OF 1781, NOVEMBER SESSION, CHAP. XIX, CHAN. REV. page 146.

(An ACT to adjust and regulate the pay and accounts of the officers and soldiers of the Virginia line on continental establishment, and also of the officers, soldiers, sailors, and marines, in the service of this state, and for other purposes.)

Further tract of territory allotted for the officers & soldiers.

When and how their lands may be surveyed.

VIII. WHEREAS a considerable part of the tract of country allotted for the officers and soldiers by an act of assembly entitled "an act for establishing a land office, and ascertaining the terms and manner of granting waste and unappropriated lands," hath, upon the extension of the boundary line between this state and North Carolina, fallen into that state, and the intentions of the said act are so far frustrated; *Be it therefore enacted*, that all that tract of land included within the rivers Mississippi, Ohio, and Tennessee, and the Carolina boundary line, shall be, and the same is hereby substituted in lieu of such lands so fallen into the said state of North Carolina, to be in the same manner subject to be claimed by the said officers and soldiers.

IX. *And be it further enacted*, That the governor, with the advice of the council, shall as soon as the circumstances of affairs will admit, appoint surveyors, to be nominated, examined and commissioned in the usual form, for the purpose of surveying and apportioning the said lands and the tract heretofore reserved for the said purpose to the said officers and soldiers agreeable to their ranks respectively, in such manner and in such proportions as are allowed by act of assembly as a bounty for military services. And it shall be lawful for the said officers to depute and appoint as many of their number as they may think proper to superintend the laying off the said lands, who shall have power to choose the best of the same thus to be allotted, and point the same out to the said surveyors, who shall proceed to survey the same in the proportion as they shall be directed by the said superintendants, and shall in the same manner be subject to their orders throughout the survey, which said surveys shall be at the expence of the officers and soldiers, and after such survey, the portions of each rank shall be numbered, and the said officers and soldiers shall, according to their ranks respectively, proceed to draw lots for the numbers, which they

shall have power to locate as soon as they shall think proper; which said lands shall be free from taxation during the continuance of the present war. *Provided, nevertheless,* That if at any time after the said location and allotment shall have taken place, any officer shall resign, or by his misconduct forfeit his commission, the lot by him so located shall revert to the state: *And provided also,* that nothing contained in this act shall be construed to debar the officers of the artillery and cavalry, citizens of this state who received their appointments originally in the same, and have by a regular line of succession been, or shall be, promoted to a corps raised in another state, from any of the benefits hereby granted, or intended to be granted, to the officers of the Virginia line.

1796.

ACTS OF 1781, NOV. SESSION, CHAP. XXIX. CHAN. REV. page 149.

(An act to amend an act entitled an act for giving further time to obtain warrants upon certificates for pre-emption rights, and returning certain surveys to the land-office, and for other purposes.)

I. WHEREAS the time limited in the act entitled an act for giving further time to obtain warrants upon certificates for pre-emption rights, and returning certain surveys to the land-office, and for other purposes, to the commissioners for adjusting and settling the claims to unpatented lands within their respective districts, has been found to be too short for that purpose:

Preamble.

SEC. 36. *Be it therefore enacted,* That all the powers given to the said commissioners by any act or acts of assembly, shall be and continue in force during the further term of six months, and that the further time of three months be allowed for obtaining warrants upon certificates of pre-emption rights, and entering the same with the surveyor of the county.

Revised Code,
1781, page 149,
chap. 29, sec. 1.
Further time to
enter warrants
and obtain them

II. And whereas the allowance heretofore made to the commissioners appointed to carry into execution the said act, and to sheriffs, surveyors and clerks attending the same, is inadequate to their trouble and expence: *Be it enacted,* That each commissioner for every day he shall necessarily be employed going to, attending on, and returning from the business of his office, shall receive twelve shillings and six pence in specie, the sheriff six shillings in specie, and the surveyor eight shillings in specie.

Allowance to
commissioners &
attending officers

III. And whereas the expence of carrying the said act into execution hath been greatly increased, and it is reasonable and just that such expence should be defrayed by the persons to be benefited thereby, *Be it further enacted,* That for every hundred acres of land contained in the certificates to be granted by the commissioners, the party receiving the same shall pay one shilling and six pence in specie, besides a fee of six pence in specie to the clerk for every certificate.

Tax on litigants:

[IV.] SEC. 37. And whereas many disputes may arise between settlers in the several districts who have obtained settlements and pre-emption rights from the commissioners appointed to settle the claims of unpatented land: *Be it therefore enacted,* that the county courts shall, and are hereby authorised to hear and determine all such disputes as may arise in surveying or laying off settlement or pre-emption rights; and where any such disputes shall

Revised Code,
1781, page 149,
chap. 29, sec. 4.
County courts
to hear and de-
termine dis-
putes in survey-
ing pre-emp-
tion certificates.

1796.

arise, it shall be lawful for either party to petition the court and set forth the nature of their claim; and if the court shall be of an opinion that the claim of the petitioner is just, they shall order a summons to issue for the other party, who shall appear at the next court; and the said court shall then proceed to hear and determine the right, and to settle the boundary lines between the claimants in a summary way without the usual formality of a suit of law, or may appoint a jury of twelve men to attend the surveyor at a certain day on the land in dispute; which jury shall on oath hear and determine the right of the claimants, and settle the boundary lines; and the said jury shall return their proceedings to the next county court for their confirmation.

Revised Code,
1781, page 149,
chap. 29, sec. 5.
Within what
time military
warrants to be
located.

[V.] SEC. 38. *And be it further enacted*, That where warrants have been obtained for military service, and surveys have not yet been made, it shall be lawful for the persons having such warrants, to lay the same within the like time as is allowed to persons claiming lands upon pre-emption right.

Revised Code,
1781, page 149,
chap. 29, sec. 6.
Military war-
rants under for-
mer govern-
ments.

[VI.] SEC. 39. *And be it further enacted*, That all persons who had, during the former government, made locations of land under military warrants, according to the laws and rules then in force, shall have the benefit of their said locations provided they do not interfere with actual settlements made on such lands before the first day of January, one thousand seven hundred and seventy-eight, and shall be admitted to surveys and grants therefor, upon re-entering their lands, and hereafter complying with the rules and regulations of the land office: *Provided*, that all lands claimed by virtue of such former locations, shall be re-entered with the county surveyors within twelve months after the end of this present session of assembly.

*When surveys
shall be made of
entries on the
eastern waters.*

VII. And whereas by the act of general assembly for adjusting and settling the titles of claimers to unpatented lands, a certain time was limited within which the surveyors of the counties on the eastern waters should survey all lands within their counties regularly entered for before the end of the session of assembly in which the said act was passed, which time was, by subsequent acts, extended to other definitive periods, and it not being in the power of the party claiming such entries to compel the surveyor to a performance of his duty, or to controul those accidents which may some times render such performance impracticable, it is therefore unjust that he should lose his rights on any failure of duty in the surveyor, whether wilful or involuntary: *Be it therefore enacted*, That the surveyors of the several counties on the said eastern waters shall proceed, with all practicable dispatch, to survey the said entries before described,

and for this purpose shall proceed in notifying the party making the survey, delivering a plat and certificate, and in all other circumstances as by the act establishing the land office is directed in the case of surveys to be made on entries subsequent to the end of the said session of assembly; and the party interested shall be subject also to the same forfeitures of right if he fail in any thing prescribed by the same act last mentioned, to be done on his part.

VIII. And whereas by the said law for establishing the land-office, all orders of council or entries in the council books for lands not carried into execution by actual survey, were made void, which, so far as it respected lands on the eastern waters, produced much injury to individuals and no utility to the public: *Be it therefore enacted*, That all orders of council and entries in the council books for lands on the eastern waters, which were in force at the passing of the said act, and which have been precluded from revival by entries or surveys regularly made for the same lands since the passing of the said act, shall stand revived and re-established, and the rights accruing thereon be vested in the persons then owning the same, their heirs or other representatives: And that the said orders of council or entries in the council books shall stand on the footing of entries in the surveyors books, and as such be considered to every intent and purpose, save only that where they exceed the quantity of four hundred acres, they shall be good for their whole quantity, so far as they would have been good by authority of the said orders of council or entries in the council books before the passing of the said act.

IX. And whereas many persons have obtained certificates of surveys of lands and returned the same to the land-office, and patents cannot issue for the same until six months after opening the courts of justice, whereby a great proportion of landed property will be covered from taxation, and unjust inequality in the public burdens upon the good people of this commonwealth be produced—For remedy whereof, *Be it enacted*, that patents shall issue agreeable to all certificates for surveys of land at the times respectively and in the manner practised under the laws preceeding the act of the last session, entitled, “an act preventing a discontinuance of the general court, and suspending the proceedings of certain courts in particular cases,” the said act notwithstanding. And the register of the land-office shall deduct out of the calculation of time for which patents have been usually detained, five months and no more for the late occlusion of the courts, and patents shall forthwith issue in all cases in the usual manner, the said recited act notwithstanding.

[X.] SEC. 40. *And be it further enacted*, That it shall not be necessary to exchange warrants for military service performed last war; but that all locations made under the same, shall stand upon the same footing as those made under treasury warrants, and the parties shall be entitled to surveys and grants in the same manner.

ACTS OF 1782; MAY SESSION, CHAP. XLVII. CHAN. REV. page 166.

(*An act for providing more effectual funds for the redemption of certificates granted the officers and soldiers raised by this state.*)

I. Whereas by an act of the last session of assembly, certain certificates were directed to be granted the officers and soldiers raised by this state, for depreciation and arrears of pay due them, which certificates, from the urgent necessity of the said officers and soldiers, and from the insufficiency of the funds provided for their redemption, have already depreciated in their value, and without the aid of the legislature, will not answer the equitable purpose for which they were intended: *Be it therefore enacted*, That all persons who have obtained or may hereafter obtain injunctions in chancery to stay the sale of any escheated or forfeited estates, or have filed or may hereafter file a plea of *monstrans de droit* or

1796.

Orders of council for land on the eastern waters to be valid.

Patents to issue as usual, notwithstanding the act of May 1781 chap. 9. Register to allow 5 months for the late occlusion of the courts.

Revised Code, 1781, page 150 chap. 29, sec 10 Not necessary to exchange warrants for military service last war.

See Oct. 1780, ch. 27, & notes. Preamble.

Injunctions or pleas to stay sale of escheated property to be expedited.

1796.

traverse, shall be considered as plaintiffs prosecuting against the commonwealth, in which the proof shall lie upon them; and the court of chancery or general court, as the case may be, shall, at their second sessions after any injunction obtained, or plea of *monstrans de droit*, or *traverse*, filed, proceed to hear, try, and determine the same, unless good cause for a continuance be shewn to the court, otherwise every such injunction shall be considered as dissolved, or plea of *monstrans de droit* or *traverse* set aside.

Fraudulent conveyances by British subjects.

11. *And be it further enacted*, That upon any information being given to an escheator, that any British subject or other person absent, or his or their attorney, on his or their behalf, hath made a fraudulent or fictitious conveyance of the estate of such British subject, or absentee, since the nineteenth day of April one thousand seven hundred and seventy five, such escheator shall, and he is hereby empowered and required to summon, as well the trustee or person to whom such estate may have been conveyed, as also such other persons as can give evidence thereon, to appear before a jury of inquest, and if the said jury upon examination of the witnesses, the oath of the party, or other sufficient evidence, shall find that such British subject or absentee, hath any present or future interest in the said estate, such interest shall be forfeited to the commonwealth for the purposes aforesaid.

Payment of British debts into treasury, reviewed. Creditors may attach.

12. *And be it further enacted*, That so much of the act for sequestering British debts as authorizes the payment thereof, be, and it is hereby revived and put in full force. And all persons indebted to British subjects and others, absentees as aforesaid, who shall annually in the month of May, pay into the public treasury, in specie, or in tobacco or hemp, at the price to be fixed by the auditors, one tenth part or more of the debts they respectively owe to such British subjects or absentees, shall be so far exonerated from the same: Saving however, to any *bona fide* creditors of such British subjects or absentees, the right which by law they may have to attach such debts in the general court or court of any county where such debtor or debtors to any British subject or absentee resides. And the treasurer is hereby directed to sell at public auction, as soon as may be, for specie or the said certificates, all such tobaccos or hemp; and the money arising therefrom, as also all sums as may be paid into the treasury by the said debtors, shall, in the month of June in every year, be applied to the discharge of the interest due upon the said certificates, which said interest shall be computed to commence on the first day of January last. And should it so happen, that after the payment of the interest as aforesaid, there shall be remaining in the treasury, on the first day of July for two years next to come, any monies arising from the funds appropriated for payment of the interest and redemption of the said certificates, the same shall be paid to the holders thereof in equal proportion.

Sale of forfeited estates.

13. *And be it further enacted*, That no escheated or forfeited estate shall hereafter be sold without three months previous notice thereof in the gazette.

Officers and soldiers to pass their accounts on oath.

14. *And whereas* the documents required by the auditors of public accounts as legal vouchers for the settlement of the pay accounts of the officers and soldiers, who have served in the northern or southern armies, or in the county of Illinois, can never be produced, owing to the deaths of many individuals, and the unavoidable separation and other accidents which the events of war have occasioned: *Be it therefore enacted*, That the said officers who have served for any term not less than one year prior to the year one thousand seven hundred and eighty-one, shall be admitted to settle their pay accounts with the public auditors on oath: And any soldier producing the discharge of his captain or commanding officer, shall be entitled to the arrears of cloathing and his pay for the time expressed in the discharge, or in case of such time not being ascertained, then shall be entitled to his pay for the term of his enlistment. And the like certificates for the balances, if any shall appear to be due, shall be thereupon granted by the auditors to the said officers and soldiers.

Guard against further depreciation.

15. *Provided always, and it is hereby further enacted*, That the more effectually to guard against the depreciation of the said certificates, the auditors of public accounts shall, for the present, issue certificates for the one third part

only of the several balances which may appear due to the respective officers and soldiers, and the remainder at such times, and in such proportions as hereafter may, to the governor in council, appear fit, upon the application of any three or more of the general and field officers heretofore appointed by the said officers to act for them in this behalf.

VII. And whereas it is necessary that the number of claims to any part of the lands appropriated for the benefit of the said officers and soldiers should be speedily ascertained: *Be it therefore enacted*, That all persons having claims as aforesaid, be required and they are hereby directed, to transmit authenticated vouchers of the same to the war office, on or before the first day of January next; and if any person having such claim shall be without the state, he shall transmit the same on or before the first day of June next following.

VIII. *And be it further enacted*, That the register of the land office be, and he is hereby empowered and required to grant to the said officers and soldiers, warrants for the lands allotted them, upon producing to the register a certificate of their claims respectively from the commissioner of war, and no otherwise.

IX. *And be it further enacted*, That any officer or soldier who hath not been cashiered or superseded, and who hath served the term of three years successively, shall have an absolute and unconditional title to his respective apportionment of the land appropriated as aforesaid. And for every year which every officer or soldier may have continued, or shall hereafter continue in service beyond the term of six years, to be computed from the time he last went into service, he shall be entitled to one sixth part in addition to the quantity of the land apportioned to his rank respectively.

X. *Provided always, and it is hereby enacted*, That no surveyor shall be permitted to receive any location upon any warrant for lands within the country reserved for the officers and soldiers, until the apportionment and draught for the same, as directed by the act entitled "an act to adjust and regulate the pay and accounts of the officers and soldiers of the Virginia line on continental establishment, and also of the officers, soldiers, sailors and marines, in the service of this state, and for other purposes.

XI. *And be it further enacted*, That the said officers' and soldiers' certificates shall be received in lieu of any fees or other monies which may be hereafter due to the public for patents for the lands assigned to the said officers and soldiers by law.

XII. *And be it further enacted*, That so many officers and soldiers in lieutenant colonel Lee's legion, or any other corps, as are credited to the quota of troops required from this state and properly belonging to the same, as also all military staff officers appointed from, and acting in the Virginia continental line, upon producing to the auditors a certificate in favor of any such officer or soldier from the commissioner of war, shall be allowed certificates for depreciation and arrears of pay, in like manner and upon the same terms as the other troops raised by this state: and the commissioner of war is hereby authorized and required to take the most effectual precautions which he may think proper, precisely to ascertain the claims of such staff officers.

XIII. *And be it further enacted*, That the navy officers, sailors and marines of this state, shall, in all respects, have the same claims, and be subject to the same restrictions and regulations, in all matters coming within the purview of this act, as are allowed to the officers and soldiers in the land service of the same. So much of the act entitled "an act to adjust and regulate the pay and accounts of the officers and soldiers of the Virginia line on continental establishment, and also of the officers, soldiers, sailors, and marines, in the service of this state, and for other purposes," as comes within the purview of this act, shall be, and is hereby repealed.

1796

Officers and soldiers to give in their land claims

How their land warrants are to be obtained.

Bounty in land for 3 years service. Addition for 6 years service.

No locations within their bounds.

Their certificates to be received for public patent fees.

Certain officers and soldiers included in pay & bounty.

Repealing clause.

1796

ACTS OF 1782, MAY SESSION, CHAP. XLIX, CHAN. REV. page 169.

See May 1779,
ch. 12, and notes.

(An act for further continuing an act for giving further time to obtain warrants upon certificates for pre-emption rights, and returning certain surveys to the land-office, and for other purposes.)

Revised Code,
1782, page 169,
chap. 49, sec. 11
Further time to
return warrants
to the survey-
ors.

[I.] SEC. 41. Whereas the powers of the commissioners for adjusting and settling the titles of claimers to unpatented lands, will expire before the business can be finished: *Be it therefore enacted*, that all the powers heretofore given them, except in the district of Kentucky, shall continue and be in force until the first day of June next; and that the like time be allowed for locating pre-emption warrants in the surveyors' offices respectively.

Revised Code,
1782 page 169
chap. 49, sec. 2.
And to have
certificates re-
corded.

[II.] SEC. 42. And whereas sundry persons omitted to have their certificates recorded in the surveyor's office, and to enter their settlement rights in his books within the time prescribed by law: *Be it therefore enacted*, that such persons shall be allowed until the first day of May next to make such entries and record such certificates.

Books and papers
of commissioners
to be delivered
to register.

III. And whereas great inconveniencies have arisen from the register's not having been furnished with a copy of the proceedings of the commissioners for the district of Kentucky: *Be it therefore enacted*, That the said commissioner shall forthwith deliver to the said register all the books and papers respecting their said business, which books, or authentic copies of any certificates, shall be sufficient authority to the register to issue pre-emption warrants upon the claimants performing the other requisites in those cases.

Revised Code,
1782, page 169
chap. 49, sec. 4.
Lands saved if
duties performed
before cave-
ats.

[IV.] SEC. 43. And whereas in some cases plats and certificates of survey have not been recorded in the surveyor's office, nor returned to the register's office, within the times respectively limited by law; and it is doubtful whether the lands held under such surveys are not still liable to be caveated: *Be it therefore enacted*, that where no caveat shall be entered before the said duties respectively shall be performed, such lands shall not thereafter be liable to forfeiture on account of such failure.

Every person instituting a suit before any court of commissioners, shall pay down six shillings in lieu of the ten pounds heretofore directed to be paid.

Specie certificates
or warrants to
be taken for land

V. *And be it further enacted*, That specie certificates, being first audited, or warrants upon the treasury, shall hereafter be receivable in discharge of the composition money, payable upon certificates of surveys on entries made with the surveyors before the establishment of the commonwealth's land-office, and upon certificates of survey of settlement rights; and that the deputy register of the land-office for the time being, shall be, and he is hereby empowered to receive such composition money or certificates, together with the plats and certificates of survey, in the Kentucky country.

Revised Code,
1782, page 169
chap. 49, sec. 6.

[VI.] SEC. 44. *And be it further enacted*, That there shall be allowed a term of twelve months from the end of this

present session of assembly, for returning to the land-office certificates of surveys of land heretofore surveyed; and the register of the land office is hereby empowered and required to receive the same, notwithstanding the time limited for that purpose may have expired.

1796.

Further time to return surveys.

[VII.] SEC. 45. *And be it further enacted*, That the surveyor of any county within the district in which the right of pre-emption was granted, is hereby authorised and directed to locate and survey any pre-emption warrant on any waste and unappropriated lands within the district, without exchanging the same: *Provided*, they do not have any force of pre-emption, but shall be equal and on the same footing with treasury warrants.

Revised Code,
1782, page 169
chap. 49, sec. 7.
Pre-emption
warrants may be
located on any
waste lands, &c.

ACTS OF 1782, OCTOBER SESSION, CHAP. XXIV. CHAN. REV. page 179. *See May 1779,*
(*An act concerning the titles of settlers on lands surveyed for sundry companies.*) chap. 12.

I. Whereas by the act of assembly entitled "an act for adjusting and settling the titles of claimers to unpatented lands, under the present and former government, previous to the establishment of the commonwealth's land-office," the titles of settlers on land surveyed for sundry companies by orders of council, were to be adjudged by certain commissioners appointed for that purpose; and that if the parties, their heirs or assigns, to whom such title shall be adjudged, shall not, within six months at farthest, from the time of their respective judgments in their favor, pay or tender to the company to whom the same is due, or their agent, the price and interest so fixed by the commissioners, the title of every person so failing, shall be forfeited, and to all intents and purposes, null and void.

II. And whereas it is represented to this present general assembly, that from the great scarcity of specie, the persons to whom such titles have been adjudged, have not been able to pay the price of their lands and interest within the time limited by the said act: *Be it therefore enacted*, That so much of the said recited act, as respects the forfeiture of the titles of settlers on lands surveyed for any company, shall be, and the same is hereby repealed; and the time limited as above for the settlers to pay the price of their lands, shall be, and hereby is prolonged for twelve months, at the end of which time, the said settlers shall be liable to pay the principal and interest due for their lands, upon good and sufficient titles being tendered or made to them; and on failure of such payment, the said land shall be forfeited and revert to the grantees.

Further time allowed to pay their money.

ACTS OF 1782, OCTOBER SESSION, CHAP. XXXIII. CHAN. REV. page 180.
(*An act concerning Surveyors.*)

II. *And be it further enacted*, That it shall and may be lawful for the principal surveyor of any county within this commonwealth, to appoint one deputy, for whose conduct the principal shall be answerable; who shall, in the absence or indisposition of such principal, keep the office and transact the business of the same, in the same manner as such principal surveyor might have done.

SEC. 46. Whereas sundry persons have been hitherto prevented by unavoidable accidents from making entries upon their certificates for settlement rights with the sur-

Revised Code,
1783, page 206,
chap. 39, sec. 1.

1796.

Further time to
make entries on
certificates, &c.

veyor of the county wherein the lands lie, and from obtaining and locating warrants for lands due to them upon pre-emption rights: *Be it therefore enacted*, that the further time of nine months from and after the end of this present session of assembly, shall be allowed for making all entries upon certificates for settlement rights, and for locating warrants upon pre-emption rights, as specially described in the certificates by which such rights are held.

Revised Code,
1783, page 206,
chap. 39, sec. 2.
And for return-
ing surveys to
the register.

SEC. 47. And whereas on account of the like accidents some plats and certificates of survey have not been returned to the register's office within the time limited by law; and it is doubtful whether such plats and certificates of survey can now be received by the register of the land office: *Be it therefore enacted*, that the register of the land office, or his deputy, shall be obliged to receive such plats and certificates of survey, and the land shall not be liable to forfeiture on account of such failure, before the first day of June next, provided that nothing herein contained shall be construed to affect any caveats now entered or which shall be entered before the end of this present session of assembly.

1783,
Page 206, chap
39, sec. 3
All plats in
Kentucky to
be first lodged
with the depu-
ty register.

SEC. 48. And whereas the good purposes for which a deputy register was appointed in the western country, will not be fully attained, unless all plats and certificates of surveys made in the district of Kentucky are registered in his office: *Be it therefore enacted*, that from and after the first day of November next, the register of the land office shall not receive any plat and certificate of survey made in the district of Kentucky, before it has been registered and transmitted to him by his deputy in that country, agreeable to an act entitled "an act to empower the register of the land office to appoint a deputy on the western waters," and no patent shall issue until such survey has been registered six months in the principal land office.

1783.
Page 207, chap
39, sec. 4.
To prevent
friendly caveats
and delay in
sale.

SEC. 49. And whereas a practice hath too often prevailed of entering friendly caveats upon lands actually liable to forfeiture, and of taking out summonses on such friendly caveats without any design of executing the same, whereby such caveats are continued for a great length of time, and much land covered from taxation: *Be it enacted*, that no caveat shall be entered after the first day of January next, unless the person at the time of entering

such caveat, shall file with the register, or his deputy, an affidavit that such caveat is really and *bona fide* made with an intention of procuring the lands for the person in whose name such caveat is entered, and not in trust for the benefit of the person against whom such caveat is entered; and all caveats entered contrary to the direction of this act, shall be absolutely null and void. And wherever a summons upon a caveat shall either not be returned at all or be returned not executed, the caveat upon which such summons shall have issued, shall be dismissed with costs, unless the court before whom such caveat shall be depending, shall be satisfied that the said summons not having been executed, did not proceed from the neglect of the party who entered such caveat.

1796.

SEC. 50. *And be it further enacted*, That the clerk of the supreme court of the district of Kentucky, shall return to the deputy register of the land office, within one month after the end of every session of the said court, an attested list of all caveats that were dismissed or determined at the said preceding court, which the deputy register shall compare with his caveat book; and in all cases where he shall find that the caveats have been dismissed or determined in favor of the defendant, he shall record and transmit the said list to the principal register, together with the plats and certificates of survey that have been detained in his office by such caveats, that grants may issue thereupon as if no such caveats had been entered.

1783.
Page 207, chap.
39, sec. 5
Lists of caveats
ended to be re-
turned to the
register.

SEC. 51. Whereas the act of assembly passed in the year one thousand seven hundred and eighty-one, entitled "an act for the relief of certain persons now resident on the western frontier," will expire this session of assembly, and it is necessary that the same should be further continued and amended:

May 1783.
Page 45, chap.
186, sec. 1.
In original law
in rev. code, ti-
tle only, page
207, chap. 42.
Recital.

SEC. 52. *Be it therefore enacted*, That the act entitled "An act for the relief of persons now resident on the western frontiers," shall continue and be in force from and after the expiration thereof, for and during the term of six months, and from thence to the end of the next session of assembly.

Ibid.
The law con-
cerning the
claims of poor
persons pro-
longed.

SEC. 53. *And be it further enacted*, That all persons claiming under the said recited act, besides the usual office fees, shall, within three months from the date of their respective surveys, pay into the treasury after the rate

Sect. 3.
Confideration
money what,
and how paid,

1796.

of thirteen shillings and four pence for every hundred acres of land which shall be granted to such claimants, as the state price, and in default of making such payment, the lands so granted shall be forfeited, and recoverable in the manner that the said act directs.

ACTS OF 1783, OCTOBER SESSION, CHAP. IV. CHAN. REV. page 210.
(An act for surveying the lands given by law to the officers and soldiers on continental and state establishments, and for other purposes.)

Preamble.

Deputation of
officers to choose
superintendants
and surveyors.

I. For the better locating and surveying the lands given by law to the officers and soldiers on continental and state establishments, *Be it enacted by the general assembly*, That it shall and may be lawful for the deputations of officers consisting of major-general Peter Muhlenburg, major-general Charles Scott, major-general George Weedon, brigadier-general Daniel Morgan, brigadier-general James Wood, colonel William Heath, lieutenant colonels Towles, Hopkins, Clarke and Temple, captain Nathaniel Burwell, and captain Mayo Carrington, of the continental line, or any five of them; and brigadier-general Clarke, colonels Brent, Muter and Dabney, major Merriwether, captains Roan, Rogers, and Botwell, of the state line, or any three of them, to appoint superintendants on behalf of the respective lines, or jointly, for the purpose of regulating the surveying of the lands appropriated by law as bounties for the said officers and soldiers; and that the said deputations of officers shall have power to nominate and appoint two principal surveyors, to be commissioned as other surveyors within this commonwealth, and contract with them for their fees, who shall appoint their deputies, to be approved by the superintendants; and in case of their death or inability to act, the superintendants shall have power to appoint, from time to time, a successor or successors, as the case may require. *Provided*, That one sixth part of the fees received by such surveyor or deputies, shall be accounted for to the use of the college of William and Mary, in the same manner as other surveyors are directed to account for their fees, upon surveys made by them within this commonwealth. That the holder or holders of land warrants for military bounties, given by law as aforesaid, shall, on or before the fifteenth day of March next, deliver the same to the principal surveyors, at such place or places as they shall, with the advice of the deputations, direct, endorsing on the back of each warrant, the number of surveys the same shall be laid off in, specifying the quantity of each survey. *Provided*, That a general officer shall not be allowed more than six, a field officer five, and a captain and subaltern four surveys in their respective apportionments of land, and the staff in proportion. The non-commissioned officers and soldiers warrants shall be put into classes, as near as circumstances will admit, of one thousand acres each, numbered previous to the drawing, and the number of the lot drawn shall be endorsed on every such class; and the persons interested in each class, shall determine their choice by lot, in the same manner as shall be done by classes, and the same to be divided accordingly by the surveyors.

One sixth of surveyors fees reserved to Wm. & Mary college.

Warrants for bounty lands to be delivered by March 15.

Limitation as to the number of surveys.

Warrants to be classed & drawn for.

Priority of location.

II. *And be it further enacted*, That the priority of location shall be determined by lot, as soon as may be, after the said fifteenth day of March next, under the direction and management of the principal surveyors and the superintendants, or any three of them, according to such regulations as shall be fixed on by the present deputation, from the officers on the continental and state establishments respectively. That all warrants delivered to the principal surveyors before the sixteenth of March next, shall be first surveyed, and those delivered upon that, or any subsequent day, shall be surveyed in the same order of priority, as they may be respectively delivered to the principal surveyors. And if the proprietor of any warrant shall, either by himself or agent, decline or refuse to locate and survey agreeable to the number of lot or lots drawn there-

to, such proprietor shall be postponed to those who do not refuse to locate and survey according to rotation.

III. *And be it further enacted*, That every officer and soldier, or their legal representatives, may attend in person, or by another authorized for the purpose, to the locating and surveying their respective portions of land; and the portions of such officers and soldiers not being transferred, who may not be represented, shall be located and surveyed under the direction of the superintendants, agreeable to their number or rotation; but the superintendants shall not be compelled to attend to the locating and surveying of lands claimed by purchase, unless such claimant attend in person, or by an agent duly authorized for that purpose. And that every person or persons holding officers' or soldiers warrants by assignment, shall pay down to the principal surveyors at the time of delivering such warrant or warrants, one dollar for every hundred acres thereof, exclusive of the legal surveyor's fees, towards raising a fund for the purpose of supporting all contingent expences, or at the option of such holder or holders, the same may be held up until the warrants of all the original grantees have been surveyed; the said surveyors to account for all the money so received, to such person or persons as the said deputations may direct.

IV. *And be it further enacted*, That the surveyors under the direction of the superintendants, and the claimants having a right to survey from the priority of their numbers, shall proceed in the first place to survey all the good lands, to be adjudged of by the superintendants, in that tract of country lying on the Cumberland and Tennessee rivers, as set apart by law for the said officers and soldiers, and then proceed in the like manner to survey on the north-west side of the river Ohio, between the rivers Scioto and the Little Miami, until the deficiency of all military boundaries in lands shall be fully and amply made up. Provided always, that in such surveys, the same proportions be observed in length and breadth as are directed by law in other surveys within this commonwealth, and shall be closed and marked on all sides. And whatever lands may happen to be left within the tract of country reserved for the army on this side the Ohio and Mississippi, shall be saved, subject to the order and particular disposition of the legislature of this State. And that the governor with advice of council, be, and he is hereby empowered and required to furnish the superintendants with such military aid, at such time, and in such manner, as he may judge necessary for the purpose of carrying this act into execution. *Provided*, that the aid to be ordered shall be from the Kentucky country, and not exceeding one hundred men.

V. And whereas the deputations of officers aforesaid, have represented to this assembly that a certain tract of country, lying on the Mississippi and the waters thereof, is from its situation and other advantages, of too much importance to be subject to fall to the lot of any individual, and it now being the request of the said liaes, though their respective deputations as aforesaid, that four thousand acres of land should be laid off on the Mississippi and the waters thereof, within the said tracts of country for a town and other public purposes, for the common benefit and interest of the whole: *Be it therefore enacted*, That the said deputations jointly, be, and they are hereby empowered, to cause four thousand acres of land to be laid off in such manner and form as they may judge most beneficial for a town, without being confined to any certain length or breadth, as in other surveys, and vested in trustees, at such place on the said river Mississippi and the waters thereof, as the said trustees may agree upon, and in such manner as the said deputations may direct for the purposes aforesaid, saving to all persons whatsoever, other than the said officers and soldiers, all right and title to the said four thousand acres of land as fully as if this act had never been made.

1796

Locations and surveys to be made under the direction of the superintendants. Transferred rights.

Where and how the lands are to be surveyed.

Governor if necessary may furnish military aid. Limitation thereof.

Deputations may lay off 4000 acres for a town.

Saving the rights of others.

1796.

ACTS of 1783, OCTOBER SESSION, CHAP. XVIII. CHANEY REV. page 214.

(An act to authorize the delegates of this state in congress, to convey to the United States in Congress assembled, all the right of this commonwealth to the territory north-westward of the river Ohio.)

Preamble.

I. Whereas the congress of the United States did, by their act of the sixth day of September, in the year one thousand seven hundred and eighty, recommend to the several states in the union, having claims to waste and unappropriated lands in the western country, a liberal cession to the United States of a portion of their respective claims for the common benefit of the union.

II. And whereas this commonwealth did, on the second day of January, in the year one thousand seven hundred and eighty-one, yield to the congress of the United States, for the benefit of the said states, all right, title, and claim, which the said commonwealth had to the territory north-west of the river Ohio, subject to the conditions annexed to the said act of cession.

Delegates empowered to convey.

III. And whereas the United States in congress assembled, have by their act of the thirteenth of September last, stipulated the terms on which they agree to accept the cession of this state, should the legislature approve thereof, which terms, although they do not come fully up to the propositions of this commonwealth, are conceived on the whole, to approach so nearly to them, as to induce this state to accept thereof, in full confidence that congress will, in justice to this state for the liberal cession she hath made, earnestly press upon the other states claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal for the common benefit and support of the union: Be it enacted by the general assembly, That it shall and may be lawful for the delegates of this state to the congress of the United States, or such of them as shall be assembled in congress, and the said delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of this state, by proper deeds or instrument in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in congress assembled, for the benefit of the said states, all right, title, and claim, as well of soil as jurisdiction, which this commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying and being to the north-west of the river Ohio, subject to the terms and conditions contained in the before recited act of congress of the thirteenth day of September last, that is to say: Upon condition that the territory so ceded, shall be laid out and formed into states, containing a suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the states so formed, shall be distinct republican states, and admitted members of the federal union, having the same rights of sovereignty, freedom and independence as the other states; that the necessary and reasonable expences incurred by this state in subduing any British posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by congress, one by this commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expences incurred by this state, which they shall judge to be comprized within the intent and meaning of the act of congress of the tenth of October, one thousand seven hundred and eighty, respecting such expences. That the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents, and the neighbouring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this state, shall be allowed and granted to the then colonel, now general George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the posts of Kaskaskies and St. Vincents were reduced, and to the officers and soldiers that have been since incor-

Conditions.

Reservations.

porated into the said regiment, to be laid off into one tract, the length of which not to exceed double the breadth, in such place on the north-west side of the Ohio, as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion according to the laws of Virginia. That in case the quantity of good lands on the south-east side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon continental establishment, should, from the North-Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands to be laid off between the rivers Scioto and Little Miami, on the north-west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation or federal alliance of the said states, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever. Provided, that the trust hereby reposed in the delegates of this state shall not be executed unless three of them at least, are present in congress.

1796.

All the lands ceded to be a common fund for the members of the federal alliance, and for no other use.

Three members at least to execute the trust.

ACTS OF 1783, OCTOBER SESSION, CHAP. XXXII, CHAN. REV. page 219.

(An ACT for reducing the several acts of assembly concerning surveyors into one act, and for paying clerks and other officers' fees.)

I. For reducing the several acts of assembly concerning surveyors into one act, and for defining as well their duties as for establishing and regulating their fees in future, *Be it enacted*, that every person who shall hereafter desire to become a surveyor, shall be nominated by the court of his county, examined and certified able by the president and professors of William and Mary college, and if of good character, commissioned by the governor, with a reservation in such commission to the said professors, for the use of the college, of one-sixth part of the legal fees that shall be received by such surveyor, for the yearly payment of which he shall give bond with sufficient security to the president and masters of the said college; he shall hold his office during good behaviour; and before he shall be capable of entering upon the execution of his office, shall, before the court of the same county, take an oath, and give bond with two sufficient securities to the governor and his successors, in such sum as he, with advice of his council, shall have directed, for the faithful execution of his office. All deputy surveyors shall be recommended by their principals to the court of the county of which such principal may be surveyor; the court shall thereupon appoint and direct one or more fit persons to examine into the capacity, ability, and fitness of the person or persons so recommended, and upon a certificate of such examination and report of the capacity, ability, and fitness of the person or persons so recommended, the said court is hereby empowered and directed to appoint him or them to act as deputy or deputies, for whose conduct in every respect touching his office, the principal surveyor shall be answerable; and all deputies so appointed shall have power and authority to act and do in all things and to every intent and purpose as the principal surveyor, except in cases otherwise provided by this act, and shall thereupon be entitled to one half the fees received for services performed by them respectively, after deducting the proportion thereof due to the college. If any principal surveyor shall fail to nominate a sufficient number of deputies to perform the services of his office in due time, the court of the county shall direct what number he shall

Preamble.

Surveyors how to be appointed.

To give bond to the college.

Tenure of office, To be sworn and give bond in court.

How deputies shall be appointed.

Their power and reward.

1796.

Penalty for giving principal more.

Land warrants to be lodged with principal surveyor.

Locations to be precisely made & entered in book.

Preference where different applications to locate the same land.

Notice of time of surveying to persons out of the county.

How a surveyor may locate his own warrants.

When and how surveys of located lands are to be made.

Chain carriers to be sworn.

Surveys to be closed, lines marked, & of proportioned length & breadth Exception.

nominate, and in case of failure, shall nominate for him. And if any deputy surveyor, or any other on his behalf and with his privity, shall pay or agree to pay any greater part of the profits of his office, sum of money in gross, or other valuable consideration, to his principal for his recommendation or interest in procuring the deputation, such deputy and principal shall be thereby rendered forever incapable of serving in such office. Every person having a land warrant and being desirous of locating the same on any particular waste and unappropriated lands, shall lodge such warrant with the chief surveyor of the county wherein the said lands or the greater part of them lie, who shall give a receipt for it if required. The party shall direct the location thereof so specially and precisely as that others may be enabled with certainty to locate other warrants on the adjacent residuum; which location shall bear date the day on which it shall be made, and shall be entered by the surveyor in a book to be kept for that purpose, in which there shall be left no blank leaves or spaces between the different entries. And if several persons shall apply with their warrants at the office of any surveyor at the same time, to make entries, they shall be preferred according to the priority of the dates of their warrants, but if such warrants be dated on the same day, the surveyor shall settle the right of priority between such persons by lot. And every surveyor shall, at the time of making entries for persons not being inhabitants of his county, appoint a time for surveying their land, and give notice thereof in writing to the persons making the same; and if on such application at his office, the surveyor shall refuse to enter such location, under pretence of a prior entry for the same lands made by some other persons, he shall have a right to demand of the said surveyor a view of the original of such prior entry in his books, and also an attested copy of it. Any chief surveyor having a warrant for lands, and desirous to locate the same within his own county, shall enter such location with the clerk of the county, who shall return the same to his next court, to be there recorded; and the said surveyor shall proceed to have the survey made as soon as may be, or within six months at farthest, by some one of his deputies, or if he hath no deputy, then by any surveyor or deputy surveyor of an adjacent county, and in case of failure his entry shall be void, and the land liable to the entry of any other person. Every chief surveyor shall proceed with all practicable dispatch to survey all lands entered for in his office, and shall, if the party live within his county, either give him personal notice of the time at which he will attend to make such survey, or shall publish such notice by fixing an advertisement thereof on the door of the court-house of the county, on two several court days; which time, so appointed, shall be at least one month after personal notice given, or after the last advertisement so published; and if the surveyor shall accordingly attend, and the party, or some one for him, shall fail to appear at the time, with proper chain carriers, and a person to mark the lines, if necessary, his entry shall become void, the land thereafter subject to the entry of any other person, and the surveyor shall return him the warrant, which may, notwithstanding, be located anew upon any other waste or unappropriated lands, or again upon the same lands where it hath not in the mean time been entered for by another person. Where the chief surveyor doth not mean to survey himself he shall immediately after the entry made, direct a deputy surveyor to perform the duty, who shall proceed as is before directed in the case of the chief surveyor. The persons employed to carry the chain on any survey shall be sworn by the surveyor, whether principal or deputy, to measure justly and exactly to the best of their abilities, and to deliver a true account thereof to such surveyor, and shall be paid for their trouble by the party for whom the survey is made. The surveyor, at the time of making the survey, shall not leave any open lines, but shall see the same bounded plainly by marked trees, except where a water course or ancient marked line shall be the boundary, and shall make the breadth of each survey at least one-third of its length in every part, unless where such breadth shall be restrained on both sides by mountains unfit for cultivation, by water courses, or the bounds of lands before appropriated. He shall, as soon

as it can conveniently be done, and within three months at farthest after making the survey, deliver to his employer or his order, a fair and true plat and certificate of such survey, the quantity contained, the hundred (where hundreds are established in the country wherein it lies) the courses and descriptions of the several boundaries, natural and artificial, ancient and new, expressing the proper names of such natural boundaries where they have any, and the name of every person whose former lines made a boundary, and also the nature of the warrant and rights on which such survey was made; and shall at the same time re-deliver the said warrant to the party. The said surveyor may nevertheless detain the said certificates and warrants until the payment of his fees. The said plats and certificates shall be examined and tried by the said principal surveyor whether truly made and legally proportioned as to length and breadth, and shall be entered within three months at farthest, after the survey is made, in a book well bound, to be provided by the court of his county at the county charge; and he shall, in the month of July every year, return to the president and professors of William and Mary college, and also to the clerk's office of his county court, a true list of all surveys made by him or his deputies in the preceding twelve months, with the names of the persons for whom they were respectively made, and the quantities contained in each, there to be recorded by such clerk; and no person shall hereafter hold the offices of clerk of a county court and surveyor of a county, nor shall a deputy in either office act as deputy or chief in the other. Any surveyor, whether principal or deputy, failing in any of the duties aforesaid, shall be liable to be indicted in the general court, and punished by amercement or deprivation of his office and incapacity to take it again, at the discretion of a jury; and shall moreover be liable to any party injured, for all damages he may sustain by such failure. Every county court shall once in every year, and oftener if they see cause, appoint two or more capable persons to examine the books of entries and surveys in possession of their chief surveyor, and to report in what condition and under the same are kept; and on his death or removal shall have power to take the same into their possession, and deliver them to the succeeding chief surveyor.

II. And for preventing hasty and surreptitious grants, and avoiding controversies and expensive law suits, *Be it enacted*, That no surveyor shall, at any time within twelve months after the survey made, issue or deliver any certificate, copy, or plat of land by him surveyed, except only to the person or persons for whom the same was surveyed, or to his, her or their order, unless a caveat shall have been entered against a grant to the person claiming under such survey, to be proved by an authentic certificate of such caveat from the clerk of the general court produced to the surveyor; and if any surveyor shall presume to issue any certificate, copy, or plat as aforesaid, to any other than the person or persons entitled thereto, every surveyor so offending shall forfeit and pay to the party injured, his or her legal representatives or assigns, thirty pounds for every hundred acres of land contained in the survey whereof a certificate, copy or plat shall be so issued, or shall be liable to the action of the party injured at the common law for his or her damages, at the election of the party.

III. And for declaring what fees a surveyor shall be entitled to, *Be it enacted*, That every surveyor shall be entitled to receive the following fees, for the services hereinafter mentioned, to be paid by the person employing him, and no other fees whatsoever, that is to say: For every survey by him plainly bounded as the law directs, and for a plat of such survey, after the delivery of such plat, where the survey shall not exceed four hundred acres of land, two hundred and fifty pounds of tobacco; for every hundred acres contained in one survey above four hundred, twelve pounds of tobacco; for surveying a lot in a town, twenty pounds of tobacco; and where the surveyor shall be stopped or hindered from finishing a survey by him begun, to be paid by the party who required the survey to be made, one hundred and twenty-five pounds of tobacco; for running a dividing line, one hundred pounds of tobacco; for surveying an acre of land for a mill, fifty pounds of tobacco; for every survey of

1796.

A plat and certificate to be delivered within three months and warrants re-delivered. Provided the fees be paid.

The plats &c. to be examined and entered in the book of principal surveyors.

Lists of all surveys to be annually returned to the college & clerk of the court. None to be clerk and surveyor of the same county.

How surveyors may be punished for neglect. Surveyor's office to be annually inspected.

No plat to be delivered but to the owner within a year; except to a caveat, or upon certificate of a caveat entered.

Penalty.

Fees in tobacco.

1796.

land formerly patented, and which shall be required to be surveyed, and for a plat thereof delivered as aforesaid, the same fee as for land not before surveyed; and where a survey shall be made of any lands which are to be added to other lands, in an inclusive patent, the surveyor shall not be paid a second fee for the land first surveyed, but shall only receive what the survey of the additional land shall amount to; and where any surveys have been actually made of several parcels of land adjoining and several plats delivered, if the party shall desire one inclusive plat thereof, the surveyor shall make out such plat for fifty pounds of tobacco; for running a dividing line between any county or parish, to be paid by such respective counties or parishes in proportion to the number of titheables, if ten miles or under, five hundred pounds of tobacco; and for every mile above ten, fifteen pounds of tobacco; for receiving a warrant of survey and giving a receipt therefor, eight pounds of tobacco; for recording a certificate from the commissioners of any district of a claim to land allowed by them, to be paid by the claimant, eight pounds of tobacco; for making an entry for land, or for a copy thereof, eight pounds of tobacco; for a copy of a plat of land, or of a certificate of survey, twelve pounds of tobacco.

May be discharged in money at penny half-penny.

IV. *And be it further enacted*, That all persons who are now chargeable with any surveyor's fees, for services under the act of assembly, entitled "an act for regulating the fees of the register of the land office, and for other purposes," or who shall hereafter become chargeable with any tobacco for any of the services mentioned in this act, shall at their election discharge the same either in transfer tobacco notes or in specie at the rate of twelve shillings and six pence for every hundred pounds of gross tobacco.

Table of fees to be set up in office under penalty. Penalty for overcharging.

V. *And be it further enacted*, That the surveyor of every county shall hereafter cause to be set up in some public place in his office, and there constantly kept, a fair table of his fees herein before mentioned, on pain of forfeiting one hundred pounds, which penalty shall be to the person or persons who shall inform or sue for the same. And if any surveyor who now is or shall hereafter become entitled to fees under this or the said recited act, shall ask or demand of any person whatsoever more than twelve shillings and six pence per hundred for such tobacco fees, or shall ask or demand larger fees than are allowed by this act, every person so offending shall forfeit and pay ten times the amount of the fees so charged, to the party or parties injured.

Surveyors to be resident in their county, under a monthly penalty.

VI. *And be it further enacted*, That every surveyor of lands shall hereafter be resident in the county whereof he is surveyor, during the time he shall continue in office, under the penalty of forfeiting two hundred pounds current money for every month he shall reside out of the same, unless detained by such business as the court of the county shall judge reasonable, one moiety of which shall be to the commonwealth, for the better support of this government and the contingent charges thereof, and the other moiety to the informer.

How penalties may be recovered.

VII. *And be it further enacted*, That all the several penalties and forfeitures by this act laid, given or inflicted, shall and may be recovered with costs, by action of debt or information, in any court of record within this commonwealth wherein such penalty shall be cognizable; and that all and every other act and acts, clause and clauses, heretofore made, for or concerning any matter or thing within the purview of this act, shall be and are hereby repealed.

Repeal of former acts.

Officer's fees may be paid at one penny half-penny.

VIII. *And be it further enacted*, That all persons who now are or hereafter shall be chargeable with any tobacco fees due to clerks, sheriffs, and other public officers, may discharge the same either in tobacco or specie at the rate of twelve shillings and six pence per hundred, upon the gross tobacco.

1783.
Page 217, chap.
29, sect. 1.
Recital,

SEC. 54. Whereas in obedience to an act of assembly, entitled "An act for adjusting and settling the titles of claimers to unpatented lands, previous to the establishment of the commonwealth's land-office," the commissioners thereby appointed proceeded to issue certificates to different claimants under the said act.

SEC. 55. And whereas many surveys made in conformity to the said certificates, include other surveys made for the same persons under the sanction and in the name of several companies who obtained grants under the former government, and which have since been confirmed by the high court of appeals; for the preservation of the rights of such companies, and convenience of those who have obtained surveys, under the decision of the said commissioners; *Be it enacted*, that all persons who have obtained certificates from the respective commissioners acting under the said above recited act for land they also claimed by purchase from the grantees may return their surveys in conformity to such certificates to the land office; and the register is hereby authorised and required to issue grants upon all such surveys, within six months after they have been returned into his office; *Provided* always, that the proprietors of such surveys shall account with the grantees or their agent, for so much of the lands as were surveyed to the said companies, prior to the year one thousand seven hundred and seventy-six, agreeably to the decree of the court of appeals, that is to say, They shall pay the said companies, or their agents, the sum of three pounds per hundred acres, for all land confirmed to the said grantees as aforesaid, with lawful interest, from the fifteenth day of May, one thousand seven hundred and seventy-nine, and no more.

SEC. 56. And in lieu of forfeiture of lands in case of non-payment, which is unreasonable, and shall hereafter cease; *Be it further enacted*, that for all arrearages which shall be due, and have been previously demanded by the said companies, or their agents, on or before the twenty-fifth day of December, one thousand seven hundred and eighty-four, previous to which no distress shall be made, the sheriff of the counties wherein such lands lie, the price of which may be due, at the request of the different companies, or their agents, may, and are hereby directed to lay off in a compact body, so much of the said land to be pointed out by the tenant or proprietor, as shall be the value of such debt, and shall proceed to sell the same, charging the debtor with the usual commission thereon, and the expence of surveying such dividend or quantity of land, provided that he gives thirty days public notice of the time and place of such sale.

SEC. 57. *And be it further enacted*, That all acts com-

1796.

1783.
Page 217, chap.
29, sec. 2.

Page 218.
Patents to issue
to those who
purchased of
companies, and
have certificates
from commissi-
oners.

1783.
Page 218, chap.
29, sec. 3.
Distress may be
made of the land
for arrears of
purchase money

1783.
Page 218, chap.
29, sec. 5.

1796.

ing within the purview of this act, shall be, and the same is hereby repealed.

ACTS OF 1784, MAY SESSION, CHAP. X. page 7.

(An ACT to amend an act "for establishing a land office, and ascertaining the terms and manner of granting waste and unappropriated lands.")

I. WHEREAS by the act entitled "an act for establishing a land office, and ascertaining the terms and manner of granting waste and unappropriated lands," it was enacted, that any person possessing high lands, to which any swamp, marshes, or funken grounds are contiguous, shall have the pre-emption of such swamps, marshes, or funken grounds, for one year from and after the passing of the said recited act; and if such person shall not obtain a grant for such swamps, marshes, or funken grounds, within the said year, then any other person may enter on and obtain a grant for the same, in like manner as is directed in the case of other unappropriated lands: And great inconvenience will arise to the proprietors of high lands adjacent to such swamps, marshes, or funken grounds, for the want of a due promulgation of the said recited act:

II. *Be it therefore enacted*, That so much of the said act as is recited above, shall be and the same is hereby repealed: And for preventing a multiplicity of law suits which may arise out of the said recited clause in the act aforesaid,

III. *Be it further enacted*, That all and every entry or entries that may have been made by any person whatsoever for such swamps, marshes, or funken grounds, shall be and the same are hereby declared null and void.

IV. *And be it further enacted*, That the proprietor of high lands to which any such swamps, marshes, or funken grounds are contiguous, shall have a right of pre-emption to enter for and complete their title thereto, until the first day of May, one thousand seven hundred and eighty-six, and no longer; after which it shall and may be lawful for any other person or persons to enter for, survey, and obtain grants for the same: saving to persons beyond sea, feme covert, infants, and persons under other legal disabilities, the term of three years after their respective disabilities shall be removed.

V. *And be it further enacted*, That patents shall be obtained upon entries for all vacant funken grounds aforesaid, in the same manner and upon the same terms as upon surplus lands. And

May 1784.
Page 7, chap.
10, sec. 5.

Recital.

Ibid, sec. 6.
Surveys may be
received with-
out the warrant

SEC. 58. Whereas the register of the land-office is restrained from receiving surveys unless the warrant under which each survey is made is also therewith returned; which in many cases is productive of great inconvenience, and the register by having in his office a list of warrants, is possessed of a sufficient check to prevent imposition herein:

[VI.] SEC. 59. *Be it further enacted*, That the said register may henceforth receive into his office any survey certified by a sworn surveyor, which corresponds with the warrant it refers to, although the said warrant under which the said survey is made shall not be returned into his office.

VII. *And be it further enacted*, That the sheriffs of the several counties within this commonwealth, shall immediately after receiving this act read the same at the court-house door of their respective counties for two several court days.

SEC. 60. Whereas an act passed in the May session, one thousand seven hundred and eighty-three, entitled "An act for giving further time to enter certificates for settlement rights, and to locate warrants upon pre-emption rights, and for other purposes," expired in part on the first day of June in the present year, and it is necessary that the same should be revived.

1796.
May 1784.
Page 8, chap.
14, sec. 1.
Recital.

SEC. 61. *Be it enacted*, That the further time of six months, from and after the said first day of June, be allowed for returning all plats and certificates of survey which have not been returned to the register's office within the time limited by law.

May 1784.
Page 8, chap.
14, sec. 2.

SEC. 62. *And be it further enacted*, That the register of the land office, or his deputy, shall be obliged to receive such plats and certificates of survey, and the land shall not be liable to forfeiture on account of such failure.

May 1784.
Page 8, chap.
14, sec. 3.

SEC. 63. Whereas several persons having early entries and locations for large tracts of lands in order to procrastinate the charge of surveying and the payment of taxes, refuse or neglect to survey them, while others who have adjacent entries and locations of later date are desirous to sue out grants and pay taxes for their lands; in aid therefore of the present means to compell surveys upon the said entries;

October 1784.
Page 7, chap.
48, sec. 1.

SEC. 64. *Be it enacted*, That all entries made in the county surveyor's books on the western waters, other than the entries made by virtue of officers' and soldiers' claims for military services, before the passing of this act shall be surveyed, and the surveys thereof returned as the law directs, on or before the first day of February, one thousand seven hundred and eighty-six, and that all future entries on the said waters shall be in like manner surveyed and returned within one year after the date of every such entry. If any entry shall not be surveyed and returned within the terms aforesaid, it shall be lawful for any person to enter for and locate the said lands in like manner as if such prior entry had not been made.

October 1784.
Page 7, chap.
48, sec. 2.
When entries
shall be surveyed.

ACTS OF 1784, OCTOBER SESSION, CHAP. LV, page 9.

(An ACT authorizing the governor, with the advice of the council, to suspend, when necessary, the surveying of certain lands in the western country.)

I. WHEREAS it has been represented to the present general assembly, that the taking possession of, or surveying the lands, in the western territories of this

1796.

state, which have been granted by law as bounties to the officers and soldiers of the Virginia line, will produce great disturbances :

11. *Be it therefore enacted*, That the governor, with advice of the council, shall be and he is hereby authorized and empowered to suspend, for such time as he may think the tranquility of the government may require, the surveying or taking possession of those lands that lie on the north-west side of the river Ohio, or below the mouth of the river Tennessee, and which have been reserved for the officers and soldiers of the Virginia line, and the Illinois regiment.

October 1784.
Page 15, chap.
66, sec. 1.
Recital.

SEC. 65. It being represented to this present general assembly, that many people within this commonwealth have not receive the benefit of an act of the last session of assembly, entitled "An act to revive and amend in part, an act, entitled, an act for giving further time to enter certificates for settlement rights, and for locating warrants upon pre-emption rights, and for other purposes ;"

Ibid, sec. 2.
Further time to
enter certifi-
cates, &c.

SEC. 66. *Be it enacted*, That the said act be, and is hereby continued until the first day of June, one thousand seven hundred and eighty-five, and no longer.

October 1784.
Page 23, chap.
79, sec. 1.

SEC. 67. Whereas by the act entitled "An act to amend the act, entitled, an act for adjusting and settling the titles of claimers to unpatented lands, under the present and former government, previous to the establishment of the commonwealth's land-office," county courts were empowered to grant certificates of settlement and pre-emption rights, in certain cases. And whereas also it has been doubted whether any person claiming lands by virtue of a treasury warrant, and caveating a person claiming the same lands under such certificate of settlement and pre-emption, or being caveated by him, be allowed to examine into and contest the legality of such certificate in the trial of the cause, even though he had no previous notice that such certificate was to be applied for ;

Recital.

October 1784.
Page 23, chap.
79, sec. 2.

Certificates
granted by coun-
ty courts not of
themselves conclusive
proof of the title.

SEC. 68. *Be it enacted*, That in all cases where any caveat has been or shall be entered by or against any person claiming lands by virtue of a certificate granted by a county court of a settlement and pre-emption right, or of a pre-emption right only, such certificate shall not of itself be considered as conclusive proof of the title of the person holding the same ; but the opposite party by or against whom such caveat may have been entered, shall be allowed to adduce any testimony proving that such certificate was granted contrary to law, or in any manner invalidating the said certificate : *Provided* always, that any

magistrate or officer belonging to the court granting such certificate as aforesaid, and who was present at the time of granting the same, may be admitted as a witness for either party, to prove on what testimony such certificate was granted.

1796

SEC. 69. Whereas the act of assembly passed in the year one thousand seven hundred and eighty-four, entitled "An act to revive and amend in part, an act, entitled an act for giving further time to enter certificates for settlement rights, and for locating warrants upon pre-emption rights, and for other purposes," which was continued by a subsequent act expired on the first day of June last; and it is expedient that the same should be revived, continued, and amended:

1785,
Page 27, chap.
36, sec. 1.
Recital.

SEC. 70. *Be it therefore enacted*, That the said recited act shall be revived and continued, and be in force until the first day of November, one thousand seven hundred and eighty-six and no longer; within which time the register of the land-office or his deputy shall receive all plats and certificates of survey, although not returned within the time heretofore limited by law, and such lands shall not be considered as forfeited, or liable to a forfeiture on that account. And whereas the time allowed for entering certificates for settlement rights is expired, and it being adjudged necessary that the same ought to be revived and continued;

1785.
Page 27, chap.
36, sec. 2.
Further time to
return plats, &c.

SEC. 71. *Be it therefore enacted*, That it shall and may be lawful for the surveyors of this commonwealth within their respective counties, at any time before the first day of June next, to receive and enter all such certificates, or the attested copies of such as shall be lost, and to proceed to survey the same as the law directs. And whereas sundry persons have been prevented by unavoidable accident from obtaining and entering pre-emption warrants before the register of the land-office was prohibited from issuing any more warrants by a resolution of the general assembly;

1785.
Page 28, chap.
36, sec. 3.
And to enter
certificates.

SEC. 72. *Be it further enacted*, That all such persons shall be allowed until the said first day of November to obtain and enter such warrants. And that every person entitled to a pre-emption warrant as aforesaid, shall pay into the public treasury thirteen shillings and four-pence for every hundred acres of land, in specie, or audited certificates, in full for the state price heretofore required; which be-

1785.
Page 28, chap.
36, sec. 4.
And to obtain
and enter pre-
emption war-
rants.

1796

ing audited, and a certificate thereof produced to the register of the land-office, the said register is hereby authorised and directed to issue such warrant to the party entitled to the same, or to his assigns.

1785.
Page 31, chap.
41, sec. 1,
Recital.

SEC. 73. Whereas the time limited by an act, entitled, "An act concerning entries and surveys on the western waters," hath been found too short for the owners of entries to carry the same into actual surveys, and the mode therein prescribed being found inconvenient :

1785.
Page 31, chap.
41, sec. 2.
An act con-
cerning entries
and surveys re-
pealed.

SEC. 74. *Be it enacted by the general assembly,* That so much of the said recited act, as directs that all entries made before the passing of the said act, shall be surveyed by the first day of February next, or for the surveying all future entries on the western waters, within one year from the date thereof, be, and the same is hereby repealed.

1785.
Page 31, chap.
41, sec. 3.
Surveyors to
notice to per-
sons (or their
agents) claim-
ing land by en-
try in their
counties.
When they will
proceed to sur-
vey the same.

SEC. 75. *And be it further enacted,* That immediately after the first day of January, in the year one thousand seven hundred and eighty-seven, the principal surveyor of every county on the western waters shall, and he is hereby required to give notice to all persons claiming land by entry within his county, or to their agents, attorneys, or other persons acting in their behalf, either personally or by affixing the same at the court house door or other usual place of holding the courts of the said county, on two several court days, that he will proceed by himself, or one of his deputies, to survey the lands therein mentioned on a certain day which he shall appoint ; which day so appointed shall be one month at least after the notice given, or last time of advertising the same. And if any person or his agent or attorney as aforesaid, shall fail or neglect to attend the surveyor with chain-carriers, and a person to mark the lines as required by law, on the day appointed for that purpose, such entry shall become void, and the lands liable to be again entered for by any person holding a land warrant ; and the surveyor shall return the warrant on which such entry was made, to the person owning the same or his agent, which may, nevertheless, be located on any waste or unappropriated lands, or on the same lands, if not already taken by some other warrant. And the owners of entries already made, shall, on or before the said first day of January, appoint some person within the county where the lands lie, or their agent or attorney, who shall give notice of such appoint-

Owners of en-
tries to appoint
an agent in the
county where
the lands lie.
Page 32.

V. YEAR OF THE COMMONWEALTH.

455

ment to the surveyor within one month thereafter, or on failure thereof, his entry shall become void. Provided, that nothing in this or any other act, shall extend to forfeit or make void any entry claimed by infants, or prisoners in captivity, but that all such persons shall have three years after their several disabilities are removed, to complete the same: Provided also, that if on the day appointed by the surveyor for the surveying any entry as before directed, he shall be prevented by accident or other cause from making the same, such entry shall not, in that case, become void; but the surveyor shall give other notice as often as such cases shall happen. And whereas the principal surveyor of Jefferson county resigned his office in the month of July, in the year one thousand, seven hundred and eighty-four, but after such resignation, and before notice thereof could be given at his office, sundry locations and surveys were made with the deputy, and it is just and reasonable to confirm the same:

1796.

Recital.

SEC. 76. *Be it therefore enacted*, That all such locations and surveys shall to all intents and purposes be good and valid, and shall entitle the persons claiming land under the same, to the same preference as they would have had if no such resignation had taken place.

1785.
Page 32, chap.
42, sec. 4.
Certain entries
and surveys le-
galized.

ACTS OF 1785, OCTOBER SESSION, CHAP. XLIV, page 38.

(*An ACT for dividing the county of Lincoln into three distinct counties.*)

II. *AND be it further enacted*, That all principal surveyors heretofore appointed, or hereafter to be appointed, shall and they are hereby authorized to demand and receive all entries, warrants and certificates from the principal surveyors of the old county which may not have been surveyed when the county was divided, and which may, on the division, fall within the limits of the new counties.

SEC. 77. And whereas the act of assembly passed in the year one thousand seven hundred and eighty-four, entitled "an act to revive and amend in part an act for giving further time to enter certificates for settlement rights, and for locating warrants upon pre-emption rights, and for other purposes," which was continued by several subsequent acts, did expire on the first day of November last, and it is expedient that the same should be revived, continued and amended: *Be it therefore enacted*, That the said recited act shall be revived and continue in part, and be in force until the last day of December, one thousand seven hundred and eighty-seven, within which time the register of the land office, or his depu-

1786.
Page 5, chap.
, sec. .

Recital.

Further time
to return plats,
&c.

1796.

ty, shall receive all plats and certificates of survey, although not returned within the time heretofore limited by law, and such lands shall not be considered as forfeited or liable to forfeiture on that account.

And to enter
certificates.

SEC. 78. And whereas the time allowed by law for entering certificates for settlement rights is expired, and it being adjudged necessary that the same ought to be revived and continued; *Be it therefore enacted*, that it shall and may be lawful for the surveyors of this commonwealth, within their respective counties, at any time before the said last day of December, to receive and enter all such certificates, or the attested copies of such as shall be lost, and to proceed to survey the same as the law directs; provided such attestation be made by the commissioners who granted the same, or by the clerk of the superior court of the district of Kentucky, or the register of the land-office.

Powers given
to county courts
to grant certifi-
cates revoked.

SEC. 79. *Provided also, and be it further enacted*, That no county court within this commonwealth shall, after the passing of this act, exercise a power of granting certificates for settlement or pre-emption rights.

Ibid.

SEC. 80. And whereas sundry persons have been prevented by unavoidable accident from obtaining and entering pre-emption warrants before the register of the land-office was prohibited from issuing any more warrants by a resolution of the general assembly; *Be it further enacted*, that all such persons shall be allowed until the said last day of December, to obtain and enter such warrants. And that every person entitled to a pre-emption warrant as aforesaid, shall pay into the public treasury thirteen shillings and four-pence, for every hundred acres of land, in specie, or audited certificates, in full for the state price heretofore required, which being audited, and a certificate thereof produced to the register of the land office, the said register is hereby authorised and directed to issue such warrant to the party entitled to the same or to his assigns.

Further time to
enter pre-emp-
tion warrants.

Page 6.

§786.
Page 14, chap.
11, sec. 1.

Recital.

SEC. 81. Whereas the act, entitled, "An act to repeal an act, entitled an act concerning entries and surveys on the western waters, and for other purposes," requiring that the owners of entries shall appoint agents or attorneys in each county where such entries are made, and notify such appointments to the principal surveyor of the county, by the first day of February, one thousand seven

hundred and eighty-seven, and declaring that on failure thereof such entries shall be void, whereby many of the good people on the western waters, through ignorance of the said recited act, are likely to be injured by forfeiture of their entries; for remedy whereof,

1796.

SEC. 82. *Be it enacted*, That no entry shall be forfeited under the said recited act, for and during the term of two years after the passing of this act.

1786, page 14,
chap. 11, sec. 2
Forfeitures re-
mitted.

SEC. 83. Whereas the act of assembly, passed in the year one thousand seven hundred and eighty-four, entitled "An act to revive and amend in part, an act for giving further time to enter certificates for settlement rights, and for locating warrants on pre-emption rights, and for other purposes," which was continued by several subsequent acts, will expire on the last day of December, one thousand seven hundred and eighty-seven; and it is expedient that the same should be further continued in part; *Be it therefore enacted by the general assembly*, that the said recited act shall be continued in part until the thirty-first day of December, one thousand seven hundred and eighty-eight, within which time the register of the land-office, or his deputy, shall receive all plats and certificates of survey, although not returned within the time heretofore limited by law, and such lands shall not be considered as forfeited or liable to forfeiture on that account.

1787.
Page 33, chap.
46 sec. 1.

Recital.

Further time to
return plats and
certificates.

SEC. 84. And whereas the time allowed by law for entering certificates for settlement rights, will expire on the last day of December, one thousand seven hundred and eighty-seven, and it is judged expedient to continue the same; *Be it therefore enacted*, that it shall and may be lawful for the surveyors of this commonwealth, within their respective counties, at any time before the said thirty-first day of December, in the year aforesaid, to receive and enter all certificates, or the attested copies of such as shall be lost, and to proceed to survey the same as the law directs, provided such attestation be made by the commissioners who granted the same, or by the clerk of the superior court of the district of Kentucky, or the register of the land office.

1787.
Page 33, chap.
46, sec. 2.

And to enter
certificates.

SEC. 85. *And be it further enacted*, That any person who hath obtained or shall obtain a pre-emption warrant before the last day of December in the present year, shall be allowed until the last day of June, one thousand seven hundred and eighty-eight, to enter the same with

1787:
Page 33, chap.
46, sec. 3.
And to locate
pre-emption
warrants.

1796.

the surveyor of the county in which the land may lie ; and all warrants so obtained with the entry and survey thereupon, shall be good and valid in law, any act or acts to the contrary notwithstanding.

ACTS OF 1787, NOVEMBER SESSION, CHAP. XXV. page 21.

(*An ACT for the preservation of the entries made for lands in the district of Kentucky.*)

I. WHEREAS it has been represented to this general assembly, that the entry books now in possession of the county surveyors respectively, within the district of Kentucky, are from continual use so much worn and defaced, that many entries for lands are scarcely legible, and as the title of many good people of this commonwealth to the lands held by them within the aforesaid district, may eventually depend on their entries for the same :

Sec. II. *Be it enacted*, That the surveyor of each county within the district aforesaid, shall transcribe in their regular order, into well bound books, all original entries for lands made in his office since the county took place, whereof he is surveyor. And as it is represented, that the surveyor of Jefferson is in possession of the entry books, containing the entries made in the county of Kentucky, before the division of the same into the counties of Lincoln, Jefferson, and Fayette,

Sec. III. *Be it enacted*, That the said surveyor of Jefferson, shall in like manner, copy all original entries made in the said county of Kentucky, until the division aforesaid took place.

Sec. IV. *And be it further enacted*, That the books into which the entries shall be so transcribed, shall be furnished to the surveyor by the county lieutenant of each county respectively, to be by him purchased out of the money which now may or hereafter shall be in his hands, arising from militia fines. And so soon as any surveyor shall have copied such entries as aforesaid, he shall give information thereof to the judges of the supreme court of the said district, who shall, and they are hereby authorized and directed, to appoint one or more person or persons, being magistrates in such county, together with such surveyor, carefully to examine the copies so made out, and compare the same with the originals ; and shall, together with such surveyor, certify at the end of such book the number of copies of entries therein contained, and that they are faithfully transcribed ; which said book or books shall be by them delivered to the clerk of the supreme court of the said district, to be kept in his office, and shall thereafter be deemed a legal record ; and all copies therefrom certified by the said clerk, shall be admitted as evidence in any court of record, in the same manner as if taken from the original entry book, and certified by the surveyor of the county.

Sec. V. *And be it further enacted*, That each surveyor shall be allowed the sum of four pence half-penny, for each entry by him copied as aforesaid : for which sum the judges of the supreme court aforesaid, are hereby authorized and required to grant to such surveyor or surveyors, their certificate or certificates, which shall be receivable in payment of all taxes arising in said district.

ACTS OF 1787, DECEMBER SESSION, CHAP. LII. page 36.

(*An act for further continuing the act entitled "act for the better regulating and collecting certain officers' fees and for other purposes therein mentioned."*)

Section 1. Whereas the act of assembly passed in the year one thousand seven hundred and forty-five, entitled "an act for the better regulating and collecting certain officers' fees and other purposes therein mentioned," which has been continued by several subsequent acts, will shortly expire, and it is expedient that the same should be further continued : *Be it therefore enacted by the*

general assembly, That the act entitled "an act for the better regulating and collecting certain officer's fees and other purposes therein mentioned," shall be continued from and after the passing of this act, for and during the term of three years, and from thence to the end of the next session of assembly, except so much thereof as relates to the delivery, collecting and recovery of the fees, formerly payable to the secretary and surveyors.

1796.

Sec. II. *And be it further enacted*, That the surveyor of every county within this commonwealth, may deliver or cause to be delivered to the sheriff of every county respectively, his account of fees now due, or hereafter to become due from any person or persons residing therein, which account shall be signed by the surveyor. And the sheriffs are hereby required and empowered to receive such accounts, and to collect, levy, and receive the several quantities of tobacco therein charged, in money, at the rate prescribed by law, of the persons chargeable therewith. And if such person or persons, after the said fees shall be so demanded, shall refuse or delay until after the tenth day of April, in any year, to pay such of the said fees as shall have been put into the hands of the sheriff before the twentieth day of January preceding, the sheriff of that county wherein such person inhabits, or of the county in which such fees become due, shall have full power and is hereby required to make distress of the slaves or goods and chattles of the party so refusing or delaying payment, either in that county where such person inhabits, or where the said fees become due: but no action, suit, petition or warrant from a justice, shall be had or maintained for surveyors' fees, unless the sheriff shall return that the person owing or chargeable with such fees, hath not sufficient within his bailiwick whereon to make distress, except where such surveyor shall have lost his fee book by fire or other misfortune, so that he be hindered from putting his fees into the sheriff's hands to collect, and in that case any suit or warrant may be had and maintained for the recovery thereof. And if any sheriff shall be sued for any thing by him done in pursuance of this act, he may plead the general issue, and give this act in evidence. The sheriff of every county, shall upon or before the last day of May in every year, account with the respective surveyors for all fees put into his hands before the twentieth day of January preceding, pursuant to this act, and pay the same, abating six per centum for collecting. And if any sheriff shall refuse to account or pay the whole account of fees, put into his hands after the deductions aforesaid are made, together with an allowance of what is charged to persons not dwelling or having no visible estate in his county, it shall and may be lawful for the surveyor, upon motion made in the general court or in the supreme court of the district of Kentucky, as the case may be, or in the court of the county of such sheriff, to demand judgment against such sheriff for all fees wherewith he shall be chargeable by virtue of this act; and such court is hereby authorized and required to give judgment accordingly, and to award execution thereupon, provided the sheriff have ten days notice of such motion.

Sec. III. *And be it further enacted*, That it shall not be lawful for any county surveyor hereafter, to withhold from any person entitled to demand the same, a plat by him demanded, and that every surveyor out of office shall have the same remedy for fees due to him, as is hereby given to the acting surveyors. *Provided*, That no surveyor shall be obliged to deliver a plat of land to any person or persons not resident within this state, before the fees for the same shall be paid, or such security given for the payment thereof, as to him shall be deemed sufficient. The commissioners of the tax in the respective counties shall be in like manner empowered to put their tickets of fees into the hands of the respective sheriffs, to be collected in like manner, and subject to the same restrictions and recovery as is herein before provided in the case of surveyors.

Sec. 4. *And be it further enacted*, That from and after the passing of this act, the clerks of the several county and corporation courts within this commonwealth, shall deliver their tickets to the respective sheriffs annually, before the

1796.

first day of March, instead of the time directed by the said first recited act, and that the fourth and fifth sections of the said act which respects the fees of the clerk of the superior courts, shall also be revived and continued, and be in force for and during the term of three years, and from thence to the end of the next session of assembly.

Sec. V. And whereas by an act of assembly entitled "an act for establishing a land office and ascertaining the terms and manner of granting waste and unappropriated lands," it is directed that every county court shall once in every year, and oftener if they see cause, appoint two or more capable persons to examine the books of entries and surveys in possession of their chief surveyor, and to report in what condition and order the same are kept; and on his death or removal, shall have power to take the same into their possession, and deliver them to the succeeding chief surveyor: and there is no means provided to compel any surveyor or other person in whose possession such books may be, to produce or deliver up such books: *Be it therefore further enacted*, That if any surveyor or other person who may be in possession of any such book of entries or surveys, shall refuse or neglect to produce such book to the persons who by any court may be appointed to examine the same, or to deliver up the same agreeable to the order of such court to any chief surveyor who has succeeded or may succeed any surveyor dead, or removed from office, such surveyor or other person, shall for every such refusal or neglect, forfeit and pay the sum of ten pounds, one half to the use of the county, and the other half to the use of the person suing for the same, to be recovered by action of debt, plaint or information.

June 1788.
Page 1, chap.
4, sec. 1.

Inclusive grants
may issue.

SEC. 86. Whereas sundry surveys have been made in different parts of this commonwealth, which include in the general courses thereof sundry smaller tracts of prior claimants, and which in the certificates granted by the surveyors of the respective counties, are reserved to such claimants; and the governor or chief magistrate is not authorised by law to issue grants upon such certificates of surveys; for remedy whereof, *Be it enacted by the general assembly*, that it shall and may be lawful for the governor to issue grants with reservations of claims to lands included within such surveys, any thing in any law to the contrary notwithstanding.

October 1788.
Page 12,
chap. 20, sec. 1

SEC. 87. Whereas the law authorising the register of the land-office to receive into his office plats and certificates of surveys that have been or shall be made, will expire on the last day of December, one thousand seven hundred and eighty-eight; and it is represented to the general assembly, that many persons through unavoidable accidents have been prevented from returning their plat and certificates aforesaid, to the register of the land-office, whereby their lands may be forfeited; for remedy whereof, *Be it enacted by the general assembly*, that the further time of two years after the passing of this act, shall be allowed for returning the same, within which time the register of the land-office, or his deputy, shall re-

ceive all plats and certificates of survey, although not returned within the time heretofore limited by law, and such lands shall not be considered as forfeited or liable to a forfeiture on that account.

1796.

SEC. 88. Whereas the act passed in the year of our Lord one thousand seven hundred and eighty-five, entitled "An act to repeal an act, entitled an act concerning entries and surveys on the western waters and for other purposes," directed that owners of entries on the western waters, should appoint agents or attornies in each county where such entries were made, and notify such appointments to the principal surveyor of the county, by the first day of February, one thousand seven hundred and eighty-seven, and declare that on failure thereof such entries should be void.

1788.
Page 13, chap.
21, sec. 1.

Recital.

SEC. 89. And whereas by an act passed in the year of our Lord, one thousand seven and eighty-six, it was declared that no entry should be forfeited under the above recited act, for and during the term of two years, which will expire during the present session of assembly, and it is expedient that the same should be further continued; *Be it therefore enacted by the general assembly*, that the further time of two years shall be allowed to the owners of entries on the western waters, to comply with the requisitions of the above recited act, during which time no such entry shall be forfeited.

October 1788.
Page 13, chap.
21, sec. 2.

Further time
for surveying
entries.

ACTS OF 1788, NOVEMBER SESSION, CHAP. LI page 22.

(*An act to regulate Surveyor's Fees in certain cases*.)

Whereas it hath been represented to this present general assembly, that no particular mode hath been prescribed upon the division of any county within this commonwealth, for the surveyor of the new county to obtain the entries of lands within the same, in consequence of which many disputes have arisen: For remedy whereof, *Be it enacted*, that the surveyor or surveyors of any county or counties, from which a new county hath been taken during the present session of assembly, or hereafter shall be taken, shall, within one month after such division takes place, make out, and on application, deliver to the surveyor of the new county, attested copies of all entries made upon lands within such new county, on his books, and not surveyed, together with the warrants upon which they were founded; for which service he shall receive three pence for every such attested copy, paid by the surveyor of the new county, upon receipt of said attested copies. And in case any surveyor shall neglect or refuse to make out, or to deliver such attested copies of entries, within the time aforesaid, or at the expiration of said time, upon the application of the surveyor of the new county, he shall forfeit and pay the sum of fifty pounds, to be recovered by action of debt or information, in any court of record, by any person who will sue for the same; any law to the contrary notwithstanding.

1796

ACTS OF 1788, NOVEMBER SESSION, CHAP. LXVII. sec. 87, page 36.

[This has been supposed to give a right of appeal from judgments on caveats.]

Sec. LXXXVII. Where any person or persons, body politic or corporate, shall think themselves aggrieved by the judgment or sentence of any county court or court of busings, in any action, suit or contest whatsoever, where the debt or damages or other thing recovered or claimed in such suit exclusive of the costs, shall be of the value of thirty pounds, or three thousand pounds of tobacco or upwards, or where the title or bounds of land shall be drawn in question, or the contest shall be concerning mills, roads, the probate of wills, or certificates for obtaining administration, such person or persons, body politic or corporate, may enter an appeal from such judgment or sentence, to the first day of the next court of the district in which such county is.

1789, page 26,
chap. 43, sec. 1
No land war-
rants to be des-
troyed.

SEC. 90. Be it enacted by the general assembly, That upon the future examination of the land-office, no original warrant shall be burnt or otherwise destroyed, but be regularly filed in the land-office, with the title papers.

1789, page 26,
chap. 43, sec. 2

SEC. 91. And be it further enacted, That no original plat and certificate of survey, once received and carried into grant, shall thereafter be delivered out of the land-office, but shall remain amongst the other evidences of the title.

ACTS OF 1789, NOVEMBER SESSION, CHAP. XLIX. page 28.

(An act to amend the act, entitled "an act for surveying the lands given by law to the officers and soldiers on continental and state establishments, and for other purposes.")

Preamble.

Additional su-
perintendants
appointed.
Their power
with respect to
certain locations.

Whereas it is represented, that the superintendants appointed by the deputations of officers under the act of assembly, entitled "an act for surveying the lands given by law to the officers and soldiers on continental and state establishments, and for other purposes," have from their local situations been unable to perform the duties required of them by the said act, by reason whereof sundry locations have been made without the direction of the said superintendants: Be it therefore enacted by the general assembly, That it shall be lawful for the said deputations of officers to appoint so many additional superintendants as they may judge necessary for carrying the said recited act into effect; who, or any three of them, shall have power, and they are hereby authorized to confirm and establish all or any of the locations, which were not made under the direction of the superintendants appointed in virtue of the said recited act, unless they see cause to the contrary: Provided nevertheless, that the powers herein contained, shall not be construed to extend to the establishment of locations or surveys which have by mistake or otherwise been made on prior locations.

1790, page 7,
chap. 10, sec.
2.

SEC. 92. Whereas the act of assembly, passed in the year of our Lord, one thousand seven hundred and eighty-five, entitled, "An act to repeal an act, entitled, an act concerning entries and surveys on the western waters, and for other purposes," which was continued by a subsequent act, will expire during the present session of assembly, and it is expedient that the same should be further continued; Be it therefore enacted by the general as-

Further time to
survey entries.

V. YEAR OF THE COMMONWEALTH.

463

sembly, that the further time of two years shall be allowed to the owners of entries on the western waters, to comply with the requisitions of the above recited act, during which time no such entry shall be forfeited.

1796.

SEC. 93. Whereas the law authorising the register of the land-office to receive into his office, plats and certificates of surveys that have been or shall be made, will expire on the last day of December, one thousand seven hundred and ninety; and it is represented to this general assembly, that many persons through unavoidable accidents have been prevented from returning their plats and certificates aforesaid, to the register of the land-office, whereby their lands may be forfeited; for remedy whereof, *Be it enacted by the general assembly*, that the further time of nine months after the passing of this act shall be allowed for returning the same, within which time the register of the land-office, or his deputy, shall receive all plats and certificates of survey, although not returned within the time heretofore limited by law, and such lands shall not be considered as forfeited or liable to forfeiture on that account.

1790.
Page 88, chap.
14, sect. 1.
Page 9.

And for returning
plats and
certificates.

SEC. 94. Whereas it hath been represented, that the time allowed by the act of the last session, entitled "An act for giving further time to the owners of surveys to return the plats and certificates thereof into the land-office," was not sufficient to comply with the purposes thereof, and application hath been made to the assembly to extend the time; *Be it therefore enacted*, that the further time of two years, to be computed from the expiration of this period mentioned in the said recited act, shall be allowed for returning all plats and certificates of surveys on the western waters to the register of the land-office, who shall receive the same, and such lands shall not be considered as forfeited or liable to forfeiture, any law to the contrary thereof notwithstanding.

1791, page 5,
chap. 4, sec. 1.

Further time
to return plats
& certificates.

ACTS OF 1791, OCTOBER SESSION, CHAP. XIV. page 9.

(*An act concerning the Southern Boundary of this state.*)

Section I. Whereas official information hath been received by the general assembly, that the legislature of the state of North-Carolina have resolved to establish the line commonly called Walker's line, as the boundary between North Carolina and this commonwealth, and it is judged expedient to confirm and establish the said line on the part of this state: *Be it therefore enacted by the general assembly*, That the line commonly called and known by the name of Walker's line, shall be, and the same is hereby declared to be the boundary line of this state.

1796.

Sec. II. *And be it further enacted*, That in all courts of law and equity within this commonwealth, the claims for lands lying between the line commonly called Walker's line, and the line commonly called Henderson's line, shall be decided in favor of the oldest title, whether derived from this commonwealth or from the state of North-Carolina.

ACTS OF 1791, OCTOBER SESSION, CHAP. XIX. page 11.

(*An act respecting the Deputy Register's office, in the district of Kentucky.*)

Sec. I. *Be it enacted by the general assembly*, That the deputy register of the district of Kentucky, shall retain in his office all plats and certificates of surveys which are now, or which shall come into his office before the first day of June next, there to remain until the general assembly of Kentucky shall give directions respecting them.

Sec. II. This act shall commence and be in force from the passage thereof.

CHAPTER CCLXII.

An ACT to reduce into one the several acts concerning the examination and trial of Criminals, Grand and Petit Juries, Venires, and for other purposes.

Approved December 17, 1796.

This act is connected with the district court laws and with the penitentiary system in general—See the prelections on chaps. 157 and 201. The reader will observe that by a provision in the circuit court law, (Vol. III. chap. 23) what is required as a qualification for a juror in the superior courts, applies now to the circuit courts—See also acts of 1799, chap. 169 of Vol. II.

Examining courts are now abolished by an act passed Feb. 11, 1809. The act of 1786, chap. 57, on the subject of examining courts, is clear and explicit: *That if it seem to them that the evidence is sufficient to convict him, they shall not discharge him; but if in their opinion it be insufficient, they shall enlarge him.*

The competency of the owner of stolen goods to bear testimony against the thief, has been contested, and several felons have been discharged on an adjudication of his incompetency. That supposed defect has since been remedied by an act of 1805, (Vol. III. chap. 293) however the defect was merely pretended. The law was as plain before as any legislature could make it, (Acts of 1785, chap. 71):

“ I. *Be it enacted by the general assembly*, That if any felon do rob or take away any money or goods, or chattels, from any of the citizens of this commonwealth, or from any person travelling through or making a temporary stay within the same, from their person or otherwise, within this commonwealth, and thereof the said felon be indicted, and after arraigned of the same felony, and found guilty thereof, or otherwise attainted by reason of evidence given by the party so robbed, or owner of the said money, goods, or chattels, or by any other by their procurement, that then the party so robbed, or owner, shall be restored to his said money, goods, and chattels: and that the justices before whom any such felon shall be found guilty, or otherwise attainted by reason of evidence given by the party so robbed, or owner, or by any other by their procurement, have power by this present act, to award from time to time, writs of restitution for the said money, goods, and chattels.

“ II. This act shall commence and be in force from and after the first day of January, one thousand seven hundred and eighty-seven.”

As to prosecutions on penal statutes, the following provisions for the advancement of justice, have been made and will exist, (Acts of 1748, chap. 4. sec. 23):

1796.

"And for the easier, speedier, and better advancement of justice in obtaining judgments, in any suit or action brought upon any of the penal laws of this colony, where the penalty sued for shall not exceed five pounds current money, or one thousand pounds of tobacco, *Be it further enacted by the authority aforesaid*, that where any demurrer shall be joined and entered in any such suit or action, in any court of record of this dominion, the judges shall proceed and give judgment according to the very right of the cause, and as the matter in law shall appear unto them; without regarding any imperfection, omission, or defect in any writ, return, plaint, declaration, information, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding such imperfection, omission, or defect, might have heretofore been taken to be matter of substance, so as sufficient matter appear in the said pleadings upon which the court may give judgment according to the very right of the cause; and that if any verdict shall be given in any such action or suit, in any court of record of this dominion, the judgment thereupon shall not be stayed or reversed for or by reason of any default in form, or want of form, in any writ, original or judicial, or by reason of any imperfect or insufficient return of any sheriff or other officer, nor for any insufficient pleading or misjoining the issue, nor for any matter of the like nature, nor shall any judgment given on any verdict in such suit or action be reversed for any the defects or causes aforesaid, any law, statute or usage to the contrary notwithstanding."

ACTS OF 1786, CHAP. LVII, page 38.

"In a presentment to the county court, if the penalty of the offence exceed not thirty shillings, or three hundred pound of tobacco, or to the general court if the penalty exceed not five pounds of current money, or one thousand pounds of tobacco, no information thereupon shall be filed, but a summons shall be issued against the defendant to answer the presentment, and such summons having been served upon him, or a copy thereof having been left at the place of his usual abode, where the prosecution shall be in the county court, at least ten days before the return day, if he do not appear, judgment shall be entered against him for the penalty; and if he do appear, the court shall in a summary way, without a jury, hear and determine the matter of the presentment, in the form in which it shall have been made, and give judgment thereupon according to law and the very right of the cause, disregarding any exception that may or might be taken to the form of the presentment."

The following act is likewise recommended to the consideration of the reader, (Acts of 1786, chap. 46, page 34):

(*An ACT concerning Treasons, Felonies, and other offences committed out of the jurisdiction of this Commonwealth.*)

BE it enacted, That all high treasons, misprisons, and concealments of high treasons and other offences, except piracies and felonies on the high seas, committed by any citizen of this commonwealth, in any place out of the jurisdiction of the courts of common law in this commonwealth, and all felonies committed by citizen against citizen in any such place, other than the high seas, shall be enquired, heard, determined, and judged by the general court, in the same manner as if the said offences had been committed within the body of a county; and such as shall be convicted of any such offence shall suffer such pains, losses of lands, goods and chattels, as if they had been attainted and convicted of such offence done within the body of a county."

Part at least of the following provision of an act of 1789, is in force here:

"The judges of the court of appeals, high court of chancery and general court, shall be conservators of the peace throughout the commonwealth; and

1796.

the justices of the peace in each county and corporation shall be conservators of the peace within their several counties and corporations respectively, and the said judges and justices within the limits aforesaid respectively shall have power to demand of such persons as are not of good fame, sufficient surety and main-prize of their good behaviour. (Chap. 30, sec. 16. acts of 1789, page 18.)

Persons charged
with felony how
proceeded a-
gainst.

Examining
court to be sum-
moned.

The proceed-
ings therein.

When the pri-
soner may be
tried in the
court of quarter
sessions.

When in a su-
perior court of
criminal jurif-
diction the de-
positions of wit-
nesses to be ta-
ken, &c.

Sheriff to re-
move prisoner
to public jail.

SECTION 1. *BE it enacted by the general assembly,* That when any person not being a slave, shall be charged before a justice of the peace with any criminal offence, which in the opinion of such justice ought to be examined into by the court of quarter sessions, the said justice shall take a recognizance of all material witnesses to appear before such court, and immediately by his warrant commit such prisoner so charged to the jail of his county; and moreover shall issue his warrant to the sheriff of his county, requiring him to summon the justices of the said court to meet at the court-house on a day to be fixed by said justice, not less than five, nor more than ten days after the date thereof, to hold a court for the examination of the fact.

SEC. 2. A sufficient number of justices to constitute a court, having met as aforesaid, shall consider whether as the case may appear to them, the prisoner may be discharged from further prosecution, may be tried in the court of quarter sessions, or must be tried in a superior court of criminal jurisdiction, having cognizance of the offence.

SEC. 3. If they are of opinion that the prisoner may be tried in the court of quarter sessions, the prisoner shall be bound over to the next court of quarter sessions to be held for that county, for trial; or on refusing to give sufficient bail, shall be remanded to the jail of the county, and there to remain until such court, or until he or she shall be bailed.

SEC. 4. If they shall be of opinion that the prisoner ought to be tried in a superior court of criminal jurisdiction, having cognizance of the offence, they shall take the depositions of the witnesses, and bind such as they shall think proper by recognizance, to appear and give evidence against such criminal, at his or her trial: and having remanded the prisoner to jail, any two justices by warrant from under their hands and seals, shall direct the sheriff or his deputy to remove the prisoner and commit him or her to the jail of the said superior court, there to be safely kept until he or she shall be discharged by due course of law. By virtue of which warrant the

sheriff shall, as soon as may be, remove the prisoner, and deliver him or her to the keeper of the said jail, who shall receive and safely keep him or her accordingly.

1796.

SEC. 5. And for enabling the sheriff safely to convey and deliver such prisoner, the said two justices by their warrants shall empower him as well within his county as without, to impress such and so many men, horses and boats as shall be necessary for the guarding and safe conveyance of such prisoners; and all persons are to pay due obedience to such warrant.

May impress
men, horses, &c.

SEC. 6. If such prisoner shall in the opinion of the court be bailable by law, they shall enter that opinion in their proceedings, and also the sum of money in which he or she and his or her bail ought to be bound, and he or she shall not be removed within twenty days after the examining court; but shall and may be admitted to bail before any justice of the same county within that time, or any time afterwards before any judge of the superior court of criminal jurisdiction in which he or she is to be tried.

Where a prisoner is bailable in he is not to be removed for 20 days.

SEC. 7. When a prisoner shall be thus committed to jail by any judge of the said court, such judge shall transmit the recognizance to the clerk of the said court, and give a warrant for the delivery of the prisoner; and the warrant being put into the hand of the officer in whose custody the prisoner shall be, he or she shall thereupon be delivered, if he or she be detained for no other cause.

Proceedings where a prisoner is admitted to bail before a judge.

SEC. 8. Any two judges of the said superior court of criminal jurisdiction when it is not sitting, may admit to bail a prisoner when they think him entitled thereto, and grant a warrant for his or her deliverance, notwithstanding the justices before whom the examination was, shall have been of a different opinion.

Two judges may admit prisoners to bail.

SEC. 9. If a prisoner shall desire witnesses to be summoned to attend the examining court, the clerk of the court of quarter sessions shall issue subpoenas accordingly.

Witnesses how summoned.

SEC. 10. When any person shall be so removed to be tried for treason or felony, the clerk of the court of quarter sessions where the prisoner was tried, shall immediately after the court holden for his or her examination, transmit to the attorney for the commonwealth a copy of the warrant for his or her commitment, and of the depositions taken on the examination, and shall more-

Duty of the clerk of the examining court

1796

1796
 1796

over issue a writ of *venire facias* to the sheriff of the county, commanding him to summon twelve good and lawful men, being house-keepers of the county, residing as near as may be to the place where the fact is alledged to have been committed, to come before the superior court of criminal jurisdiction, having cognizance of the offence, the first day of its next succeeding term, and return a pannel of their names.

Sheriff to summon grand juries to appear at a court of criminal jurisdiction.

The jurisdiction and power of the grand juries.

Where a person is not in custody a *capias* is to be awarded.

Alias,

And exigent.

Prisoners to be tried the first term.

SEC. 11. The sheriff of each county where a superior court of criminal jurisdiction is appointed to be holden, shall, before every meeting of such court, summon twenty-four of the most discreet house-keepers residing within the limits of the jurisdiction of the said court, to appear at the succeeding court, on the first day thereof, which the said sheriff is hereby empowered to do, as well without his county as within the same; and the said twenty-four house-keepers, or any sixteen of them, shall be a grand jury, who shall be sworn to enquire of, and present all treasons, felonies, murders, and other misdemeanors whatsoever, which shall have been committed or done within the limits of the jurisdiction of the said court: and if a sufficient number of the said house-keepers shall not attend on the first day of the court, the sheriff shall summon from the by-standing house-keepers of the description aforesaid, a sufficient number, together with those attending to make a jury.

SEC. 12. After any person shall be indicted for treason or felony, if he be not already in custody, the sheriff shall be commanded to attach his body by writ or by precept, which is called a *capias*; and if he return that the body is not found, another writ or precept of *capias*, shall immediately be made returnable forthwith, in which the sheriff shall also be commanded to seize his chattels, and safely to keep them; and if he return that the body is not found, and the indictee cometh not, an *exigent* shall be awarded.

SEC. 13. When the grand jury shall have presented to a superior court of criminal jurisdiction, a bill of indictment against any person charged with treason or felony, the court shall cause the offender to be arraigned and tried the same term, if he be in the custody of the jailor; or if he be bailed and forthcoming agreeable to his recognizance, unless they see good cause to adjourn the trial to

the next term, and shall allow him counsel to assist him at his trial if he desire it.

1796

SEC. 14. When any prisoner committed for treason or felony shall apply to the court the first day of the term, by petition or motion, and shall desire to be brought to his trial before the end of the term, and shall not be indicted in that term, unless it appear by affidavit that the witnesses against him cannot be produced in time, the court shall set him at liberty upon his giving bail in such penalty as they shall think reasonable, to appear before them at a day to be appointed of the succeeding term.

If not, and not indicted he may be admitted to bail.

SEC. 15. Every person charged with such crime who shall not be indicted before or at the second term after he shall have been committed, unless the attendance of the witnesses against him appeared to have been prevented by himself, shall be discharged from his imprisonment if he be detained for that cause only: and if he be not tried at or before the third term after his examination before the justices, he shall forever be discharged from the crime.

And where he is not indicted before or at the second term, he is to be discharged out of custody, &c.

SEC. 16. In all trials for such offences the prisoner shall have a copy of the indictment and of the pannel of the jurors who are to try him, whensoever he shall request it before trial or sentence.

Prisoner to have copy of indictment & pannel of the jury.

SEC. 17. The *venires* so summoned as aforesaid, or such of them as appear and be not challenged, together with so many other good and lawful men of the by-standers, being house-keepers within this commonwealth, as will make the number twelve, or if the whole array be challenged, twelve of such by-standers shall be a lawful jury for the trial of a prisoner.

What a lawful jury for the trial of a criminal.

SEC. 18. Whensoever an inquest is about to be taken in any court, in which inquest the commonwealth is a party, if he who appears and sues in behalf of the commonwealth will challenge any of the jurors, he shall assign a cause certain for his challenge, and the truth of such challenge shall be judged by the court, and if such challenge be sufficient, the juror shall be rejected, or if insufficient, he shall be admitted, and in either case the inquest shall be proceeded in.

No challenge on the part of the commonwealth without cause assigned.

SEC. 19. No person arraigned for treason shall be admitted to a peremptory challenge above the number of twenty-four; nor shall any person arraigned for murder

Prisoner may challenge peremptorily and the number.

1796.

Clerk to issue
subpoenas for
witnesses in be-
half of prisoners

Their allowan-
ces.

Prisoner stand-
ing mute shall
be convicted.

Clerk to keep
a book for ve-
nires and wit-
nesses to enter
their attendance
and travelling,
&c.

Grand juries to
be summoned in
inferior courts
and how.

Their qualifi-
cations.

Their jurisdic-
tion and power.

or felony be admitted to a peremptory challenge above the number of twenty.

SEC. 20. If a prisoner shall desire any witnesses to be summoned for him or her, to appear on the trial in the said superior court, the clerk of the said court shall issue *subpoenas* for such witnesses, who being summoned and attending, shall have the like allowance for travelling and attendance, and be subject to the same penalty for failing to attend, as is provided for witnesses in civil cases.

SEC. 21. Whensoever in treason or felony any person shall stand mute on his arraignment, or persist after being admonished by the court in not answering to his indictment, or in peremptory challenging above the number of jurors which by law he may be allowed to challenge peremptorily, or shall be outlawed, he shall be considered as convicted, and the same judgment, execution and disabilities shall take place and be awarded, as if he had been convicted by verdict or confession of the crime.

SEC. 22. The clerks of the said superior courts shall, in a book by them kept for that purpose, enter the names of all *venire* men and witnesses who attend the trial of criminals at such courts, the number of days each shall attend, the number of ferries each shall have crossed, with the distances they shall have travelled on that occasion. A certificate of which from the said clerk shall entitle the person to whom it is given to a warrant from the auditor for the amount, and to payment at the treasury according to law.

SEC. 23. The sheriff of every county within which an inferior court of criminal jurisdiction shall be held, shall, before every meeting of such court, summon twenty-four respectable and discreet house-keepers within his county, not being ordinary keepers, constables, surveyors of roads, or owners or occupiers of a water grist-mill, to appear at such next succeeding court within his county, on the first day thereof; and the said twenty-four house-keepers, or any sixteen of them appearing, shall be a grand jury, who shall be sworn to enquire into, and present all breaches of the penal laws, but they shall present such offence and breaches only, as shall have been committed within the space of twelve months before the time of such presentment, and no longer, unless the same be otherwise directed by law. And if a sufficient number

of said house-keepers shall not attend on the first day of the court, the sheriff shall summon from the by-standing house-keepers of the description aforesaid, a sufficient number, together with those attending, to make a jury.

1796.

SEC. 24. The grand juries in making any presentment, shall specify the crime presented, and the time and place when it was committed, and by whom, and shall set down at the foot of the presentment the name of the person or persons on whose information the presentment shall be made, and where they severally reside, whether they be of the grand jury or not ; and such grand juries having presented all such matters as come to their knowledge, shall be discharged.

Rules by which
they are to be
governed in
making pre-
sentments.

SEC. 25. Every grand jury in an inferior court of criminal jurisdiction shall and may present all offences made penal by the laws of this commonwealth, although the recovery of the fines for such offences shall be otherwise directed by the laws imposing the same, and although the forfeiture or penalty thereby imposed, shall not amount to five pounds.

Jury may make
a presentment
for a crime o-
therwise pu-
nishable.

SEC. 26. In a presentment to an inferior court of criminal jurisdiction, if the penalty imposed on the offence exceed not the sum of five pounds, or to a superior court if the penalty exceed not the sum of ten pounds, no information thereupon shall be filed, but a summons shall be issued against the defendant, with the presentment stated therein, by way of charge, to answer such presentment ; and such summons having been served upon him, or a copy having been left at his usual place of abode, and the persons whose names shall be set at the foot of any presentment, having been also summoned to attend at the same time as witnesses ; if he do not appear, judgment shall be ordered against him for the penalty ; and if he do appear, the said court shall have power and authority to hear and determine the same, where the penalty is less than five pounds, in a summary way, without a jury ; but in all cases where the penalty imposed shall exceed five pounds, or shall be uncertain, the trial shall be by a jury, who shall find the amount of the penalty or forfeiture incurred, and for which the court shall enter judgment and award execution according to law.

No indictment
to be filed on
certain present-
ments.

Informers to be
summoned.

Proceedings on
presentments.

SEC. 27. Every house-keeper summoned to attend a grand jury as aforesaid, and failing to attend, not having a reasonable excuse, shall be fined by the said courts res-

Penalty on a
grand juror for
failing to attend

1796.

Where penalty is less than five pounds no presentment to be made in a superior court. Absence, &c. of a grand juror how remedied.

Expences of criminal prosecutions how to be certified.

Execution of a sentence when to be done.

Where a stroke is given in one county and party dies in another, in which the offender shall be tried.

How and where accessaries shall be tried.

How offender may be removed from one county to another for trial.

pectively, not exceeding three pounds, unless good cause be shewn to the contrary, at or before the next court, to the use of the commonwealth.

SEC. 28. No grand jury shall make presentments in a superior court where the penalty imposed by law is less than five pounds.

SEC. 29. In case of sickness, death or non-attendance of any grand jurors after he or they shall be sworn, it shall be lawful for the court to cause others to be sworn in his or their stead.

SEC. 30. The several courts of quarter-sessions within this commonwealth having jurisdiction in the examination of criminals, shall annually cause to be certified to the auditor of public accounts, all claims for expences accruing from the examination and trial of criminals, for the guard and maintenance of criminals in their counties, for misdemeanors or breaches of the peace, and all other charges properly chargeable to the public, together with the vouchers on which such claims have been allowed; and the auditor is hereby authorised and required to liquidate and adjust the said claims, and to grant warrants on the treasury to the respective claimants for the amount of their claims.

SEC. 31. Execution of a sentence of death shall not be done in less than twenty days after judgment shall have been given against the prisoner.

SEC. 32. Where any person shall be feloniously stricken or poisoned in one county, and shall die of the same stroke or poison in another county, the offender shall be examined according to law by the court of the county where such stroke was given or poison administered, and he shall be tried in the court within the limits of whose jurisdiction such county lies.

SEC. 33. In like manner an accessory to murder, or felony committed, shall be examined by the court of that county, and tried by the court in whose jurisdiction he became accessory, and shall answer upon his arraignment and receive such judgment, order, execution, pains and penalties, as is used in other cases of murder or felony.

SEC. 34. If treason or felony be committed in a county different from that in which the culprit shall be arrested, any justice of that county in which he or she is arrested, may by his warrant cause the offender to be put into the custody of the sheriff, to be by him conveyed to

the county where the offence was committed, (and every sheriff while he shall officiate in execution of this act, may impress so many men, horses and boats as may be necessary for the safeguard and conveyance of the prisoner into such other county) and there brought before some justice thereof, who shall proceed in like manner as if the offender had been brought before him on the first instance. And the sheriff for removing a criminal from one county to another, shall be allowed the same fee per mile for such service, as is allowed to sheriffs for removing criminals from the county to the jail of the superior court, to be paid in like manner as other expences for criminal prosecutions.

1796.

Sheriff's allowance for such removal and how fixed.

SEC. 35. In indictments in which the exigent shall be awarded in the name of the defendant, in such indictments additions shall be made of their estate, or degree, or mystery, and of the county of which they were or be, or in which they be or were conversant : and if upon the process upon the said indictments in which the said additions be omitted, any outlawries be pronounced, they shall be void, frustrate, and holden for none : and before outlawries be pronounced, the said indictments shall be abated by exception of the party wherein the said addition be omitted.

In indictments, additions, &c. to be made.

SEC. 36. In any inquisition or indictment, the words "force and arms," or any particular words descriptive of any particular kind of force and arms, shall not of necessity be put or comprised.

The words "force & arms" are not of necessity in indictments, &c.

SEC. 37. No indictment for high-treason, misprison of treason, murder, or other felony or offence whatsoever, shall be quashed for the omission of the name of any parish, town, ville or hamlet, within any county within this commonwealth ; nor shall such omission after conviction on such indictment, be any cause to stay or arrest judgment ; nor shall any judgment on such indictment be liable to be reversed on a writ of error by reason of such omission.

Indictments not to be quashed for omission of parish, &c.

SEC. 38. No information for a trespass or misdemeanor shall be filed in any court but by express order of the court entered upon record ; nor unless the party supposed to be culpable shall have failed to appear and shew good cause to the contrary, having been required so to do by a summons appointing a convenient time for that purpose, served upon him or left at his usual place of a-

No information to be filed but by order of court.

1796.

Additions, &c.
to be made on
information &c.

bode, and the name and surname of the prosecutor, and the town or county in which he shall reside, with his title or profession, shall be written at the foot of the information before it be filed, and of every bill of indictment for any trespass or misdemeanor, before it be presented to the grand jury.

Prosecutors
made liable for
costs in certain
cases.

SEC. 39. If the grand jury to whom such bill of indictment last mentioned is preferred shall not find the bill, or if the defendant shall appear to shew cause against the filing such information, or to answer such information or indictment, and the prosecutor shall not proceed further; or if the defendant shall be found not guilty by the petit jury, or a judgment be given for him, he shall recover his costs against the prosecutor, with an attorney's fee, if one was employed, and the allowances to witnesses to be taxed in the bill of costs, and may have execution for them as the manner is in civil cases.

Amercements
to be according
to the degree of
the fault.

SEC. 40. In every information or indictment the amercement which ought to be according to the degree of the fault, and saving to the defendant his contenment, shall be assessed by twelve honest and lawful men, either those by whom the offender shall have been convicted in case of a verdict, or those who shall be empanelled for that special purpose, when judgment shall be given against him on the argument, if a demurrer, or by his confession or default.

No sheriff or
other officer of
any inquest to
have power of
fining.

SEC. 41. No escheator, sheriff, coroner or other inquisitor, shall have power of amercement for default of common summoners, save only the judges of the district courts or the respective courts of quarter-sessions.

Persons suffer-
ing a prisoner
to escape by
negligence lia-
ble to a fine.

SEC. 42. If any private person have any prisoner in his keeping arrested for suspicion of treason, felony or murder, and the person that is so arrested escape by negligent keeping before he be brought to the jail, then the person from whom such prisoner escaped shall be liable to a fine on being found guilty on an indictment in the court of that district in which such escape was made.

No forfeiture
of estate, for
treason, &c.

SEC. 43. Whensoever any person shall happen to be attainted, convicted or outlawed of any treason, misprison of treason, murder or felony whatsoever, there shall be in no case a forfeiture to the commonwealth of dower of lands or personal estate, but the same shall descend and pass in like manner as by law directed, in case of persons dying intestate, nor shall any attainder work a cor-

V. YEAR OF THE COMMONWEALTH.

475

ruption of blood, any law or usage to the contrary notwithstanding.

SEC. 44. Saving to all and every other person and persons, bodies politic and corporate, their heirs and successors, and to every of them, (other than to such offender as shall be attainted, convicted or outlawed) all such right, title, interest, entry, lease, possession, condition, profit, commodity and hereditaments, as they or any of them had, or should, or of right ought to have before or at the time of said attainder, conviction or outlawry.

SEC. 45. Approvers shall never be admitted in any case whatsoever.

SEC. 46. All actions, suits, bills, indictments or information, which shall be had, sued or exhibited upon any penal act of assembly, not affecting life or limb, made or to be made, shall be had, brought, sued or exhibited within one year next after the offence committed against such act, and not after.

SEC. 47. No special bail shall be requirable in any suit brought upon a penal law, unless by such law bail be expressly directed.

SEC. 48. In all cases where a fine is laid upon the justices of any county, one action may be brought against them all jointly.

SEC. 49. *And be it enacted*, That in all indictments for assaults and batteries, and other offences not capital, now depending, or hereafter to be prosecuted, it shall be lawful for the court before whom the same shall be depending upon good cause to them shewn, to compel the prosecutor to find security for the payment of the costs; and if such prosecutor shall fail to give security accordingly, the indictment shall be dismissed with costs.

SEC. 50. For the trial of all causes in the several courts in this commonwealth where a jury may be necessary, the sheriff or other officer attending such court respectively, shall every day the court sits, summon a sufficient number of by-standers, qualified as is hereinafter directed to attend the court that day, that out of them may be empannelled sufficient juries for the trial of causes depending in such courts; and if any person so summoned shall fail to attend the court accordingly, he shall be fined eight dollars, to the use of the commonwealth.

SEC. 51. No person shall be capable of being of a petit jury for the trial of treason, felony, or breach of the peace,

1796.

Saving the rights of others.

Approvers not to be admitted.

Limitation for the commencement of prosecutions.

No special bail to be required in penal actions.

Joint action may be brought against justices.

Prosecutors upon certain indictments to give surety for costs.

Sheriff to summon juries for the trial of causes.

Penalty on persons who are summoned, failing to attend.

1796.

Qualification of
petit jurors in
pleas of the
commonwealth
and superior
courts.

In the courts of
quarter-sessions

Sheriff not to
summon per-
sons not quali-
fied.

No exception
to a juror after
he is sworn.

Jurors to give
evidence in
court.

Jurors may be
fined for con-
tempts.

Sheriff not to
converse with
the jury.

Penalty on the-
riff for failing
to summon a
grand jury.

Penalty on ju-
rors who take
any thing to
give a verdict.

Repealing
clause.

misprison of treason, breach of the penal law, or any other plea of the commonwealth, or of any estate, or title in or to lands, tenements or hereditaments, in any court of record within this commonwealth, or to be a juror in any case whatsoever depending in the superior courts of this commonwealth, unless such person be a house-keeper, and possessed of a visible estate, real or personal, of the value of twenty pounds at least.

Sec. 52. No person shall be capable to be of a jury for the trial of any cause whatsoever in any court of quarter sessions, or other inferior court, unless he be possessed of a visible estate, real or personal, of the value of ten pounds at least, and be of good demeanor.

Sec. 53. No sheriff or other officer shall at any time summon or return any juror not qualified as this act directs.

Sec. 54. *Provided always*, that no exceptions against any juror on account of his estate, shall be allowed after he is sworn.

Sec. 55. *Juries de medietate lingue* may be directed by the courts respectively.

Sec. 56. Jurors knowing any thing relative to the point on issue shall disclose the same in open court.

Sec. 57. Any juror guilty of contempt to the court, may be fined by such court in any sum not exceeding ten pounds.

Sec. 58. No sheriff shall converse with a juror but by order of the court after the jury have retired from the bar.

Sec. 59. If any sheriff shall fail to summon a grand jury and return a pannel of their names, as herein directed, he shall forfeit and pay for the use of the commonwealth thirty pounds.

Sec. 60. If any juror upon any inquest whatsoever, shall take any thing by himself or another, to give his verdict, and shall be thereof convicted, such juror shall not thereafter be put on any jury, and shall pay ten times as much as he shall have taken, whereof one half shall go to him who will sue for the same, and the other half to the commonwealth.

Sec. 61. The act, entitled "an act concerning grand juries," passed in the year one thousand seven hundred and ninety-four, shall be, and the same is hereby repealed.

Sec. 62. So much of every act or acts, or parts of any

V. YEAR OF THE COMMONWEALTH.

477

act or acts as comes within the purview of this act, shall be, and the same is hereby repealed. 1796.

This act shall commence and be in force from and after the passage thereof. Commencement.

CHAPTER CCLXIII.

An ACT to amend an act entitled "an act to establish District Courts in this Commonwealth."

Approved December 17, 1796.

See the prelection to chap. 201.

SECTION 1. *BE it enacted by the general assembly,* That the district courts shall be held three times in every year, to wit: the district composed of the counties of Jefferson, Nelson, Washington, Hardin, Green and Logan, on the first Monday in the months of January, May and September, in every year; the district composed of the counties of Shelby, Franklin and Woodford, on the first Monday in the months of April, August and December, in every year; the district composed of the counties of Campbell and Mason, on the second Monday in the months of February, June and October, in every year; the district composed of the counties of Bourbon and Harrison, on the first Monday in the months of March, July and October, in every year; the district composed of the counties of Fayette, Scott, Clark and Madison, on the third Monday in the months of March, July and October, in every year; the district composed of the counties of Mercer and Lincoln, on the third Monday in the months of April, August and December, in every year.

District courts to be 3 times a year. For Bardstown.

Franklin.

Mason.

Paris.

Lexington.

Danville.

SEC. 2. The counties which have been made since the passage of the act entitled "an act establishing district courts in this commonwealth," or which may hereafter be made, shall if taken from one county, or from two or more counties lying in the same district, remain in the district to which they formerly belonged; and if taken from two or more counties lying in different districts, remain in the district to which the greater part of the said counties formerly belonged, until it be otherwise ordered by law; and the jurisdiction of the said courts and judges thereof, shall in all cases extend to such parts of

New counties to what districts attached.

1795

Two annual
terms to be held
in Frankfort.

the new county as was not before the erection of the said new county within the limits of their jurisdiction.

SEC. 3. The judges of the district courts shall hold two annual general sessions at the state-house in Frankfort, for the trial of all such causes as shall herein afterwards be directed, beginning on the first Monday in February and third Monday in September, in every year, and shall continue to sit ten days, if the business before them require it.

Regulation
where a suffi-
ciency of the
judges do not
attend.

SEC. 4. If all the judges shall not attend, such of them as do attend may proceed to business: *Provided always*, that not less than three judges shall constitute a court at such general meeting; but one judge may adjourn from day to day until a sufficient number shall meet to constitute a court, provided that shall be before the sixth day of the said term.

Jurisdiction
of the general
terms.

SEC. 5. The court shall have jurisdiction in all causes, suits and motions against public debtors, sheriffs, clerks of superior and inferior courts, and all collectors of public money, and all public debtors of every denomination whatsoever, for and in behalf of the commonwealth.

To appoint a
clerk, His fees.

SEC. 6. The said court shall appoint a clerk, who shall receive such fees for all services by him performed, as the clerks of the courts of quarter sessions receive for like services.

Jurisdiction of
the district
courts.

SEC. 7. The district courts respectively shall have jurisdiction over all persons, and in all causes, matters, or things at common law, or in chancery, arising in their districts, except in cases of assault and battery, trespass and actions of slander, or where the debt or demand shall be under fifty pounds current money; in which cases they shall have no jurisdiction whatsoever, except where the same shall be brought before them by either party by *certiorari*.

How injunc-
tions, certiorari
&c. may be a-
warded in vaca-
tion.

SEC. 8. The district courts, or one judge thereof in vacation, shall have power to award injunctions, *certiorari*, writs of *ne exeat* and *habeas corpus*.

Jurisdiction
confined to the
district in cer-
tain cases.

SEC. 9. The district courts shall have no jurisdiction of caveats, *mandamuses* or *certioraries*, unless such *mandamus* or *certiorari* shall relate to some record or proceeding in the district or the land concerning which the caveat was instituted shall be within the same.

Further jurif-
diction as to
treason, &c.

SEC. 10. The district courts to be held as aforesaid shall have full power to hear and determine all treasons,

murders, felonies and other crimes and misdemeanors committed within their district, that shall be brought before them by any rules or regulations directed by law. 1796.

SEC. 11. The district court, when a question new or difficult arises, may adjourn any matter of law to the judges at their general meeting, where the same shall be heard and determined without delay, and shall be the judgment of that court from which the question of law was adjourned; but no costs shall accrue on the adjournment of a question of law. Questions may be adjourned.

SEC. 12. The clerks' fees in the district courts shall be the same with those of the courts of quarter sessions and county courts for like services, and for all other services the same with the clerk of the court of appeals, and shall be collected and accounted for in the same manner and under the same penalties as those of the courts of quarter sessions and county courts are. Clerks' fees in district courts what.

SEC. 13. All writs of *habeas corpus* may be granted without seal, pursuing in all other respects the act entitled "an act directing the mode of suing out and prosecuting writs of *habeas corpus*." Habeas corpus may be granted without seal.

SEC. 14. Each district court shall sit, if the business require it, ten days successively, Sundays exclusive, and no longer. Duration of the terms.

SEC. 15. The allotments of districts shall be made by the judges twice in every year at their general meetings in Frankfort: and until such first meeting, they shall be governed by the allotment made on the fourth Monday in January last. Allotments how made.

SEC. 16. The district courts shall have no appellate jurisdiction whatever. District courts no appellate jurisdiction.

SEC. 17. If a suit removed from the court of appeals to any district court, had been tried in the said court of appeals, or a decree made, and a re-hearing granted, such question or questions only shall be enquired into and determined in the district court as would have been enquired into and determined in the court of appeals upon the re-hearing if the suit had not been removed. Suits removed from court of appeals regulated in certain cases.

SEC. 18. The district courts respectively shall have power and authority to hear and determine all suits removed from the court of appeals according to the rules and regulations prescribed by law, in the same manner as if the said suits had originated in the said district courts. Jurisdiction over those suits.

1796.

How to be removed.

SEC. 19. Where an order has been or shall be made for the removal of any cause from the court of appeals, it shall be lawful for the clerk to deliver the papers in such suit to either party, who shall deliver the same to the clerk of the district court under the rules, regulations and penalties heretofore prescribed.

Regulations as to criminals in Franklin jail.

SEC. 20. The criminals now confined in the jail at Frankfort, or who are bound by recognizance to appear at the next district court to be held for the district composed of the counties of Franklin, Shelby and Woodford, which court shall be held on the second Tuesday in February next, in the same manner as if this act had never been made, shall be tried in the said district court at the said session; from thenceforth the said district court shall possess no criminal jurisdiction, except within the district: and if any criminal committed to the jail in Frankfort, or surrendering himself there in discharge of his recognizance at the said February term, for an offence committed in any other district, shall not be tried at the said term, he shall be sent to the jail of the district in which the offence was committed, there to be tried, or shall be recognized to appear at the next court to be held for the district in which the offence was committed; and the said recognizance shall be transmitted by the clerk of the district composed of the counties of Shelby, Franklin and Woodford, to the clerk of the court of the district in which the offence was committed, and shall be as valid to all intents and purposes as if taken in the last mentioned court.

Where jails are insufficient, how guards are to be paid.

SEC. 21. If for want of a sufficient jail in any county in which a district court is held, it shall be necessary after the first day of November next, to impress or hire guards for the safe-keeping of any prisoner in the said jail, the district court, or a judge thereof, in vacation, shall have power and authority to order the jailor to impress or hire such guards; and the said court shall certify to the county court the amount of the allowance to the said guard, which it shall be the duty of the justices of the said county court to order to be paid out of the county levy.

Sufficient jail, what.

SEC. 22. To prevent doubts concerning what shall be taken to be a sufficient jail, *Be it further enacted*, That when the judges of the district court shall receive a county jail as a sufficient jail for the district, and cause the same to be entered on their records, the county thereafter

shall be no longer chargeable for the expence of guards.

SEC. 23. The expence of guarding prisoners in the district jails in other cases shall be paid out of the treasury, for which the auditor shall grant warrants upon a certificate from the district courts.

1796.

Expence of
guards how
paid.

SEC. 24. The judges of the district courts, and the judges at the general meetings, shall have power to make such allowance to their respective clerks as they may think reasonable for the procuring paper, books, and a press for the use of their offices; and on producing a copy of the order for such allowance to the auditor, it shall be his duty to grant a warrant on the treasurer for the amount.

Allowance to
be made to the
clerks, and for
what.

SEC. 25. All writs and process of whatsoever nature returnable to any day of the next district court in each district, shall be considered to all intents and purposes as returnable to the several courts as herein before directed to be held. And all bonds or recognizances for the appearance of any person or persons at any of the said courts, shall be valid to all intents and purposes to compel such persons to appear at any of the said courts, as is herein before directed to be held. So much of every act or acts as comes within the purview of this act, shall be and the same is hereby repealed.

Writs, &c.
when return-
able.

Recognizances
the effect of.

Repealing
clause.

This act shall commence and be in force from and after the first day of January next.

Commence-
ment.

CHAPTER CCLXIV.

An ACT to reduce into one the several acts for preventing vexatious suits, and regulating proceedings in civil cases.

Approved December 19, 1796.

This act was amended in 1800, (Vol. II, chap. 294) and in 1801, (Vol. II, chap. 357)—In 1805 an act was passed introducing a summary remedy for the recovery of debts, (Vol. III, chap. 323) the provisions of which, with considerable modification, were extended to all civil cases in 1807, (Vol. III, chap. 502.)

By the act of 1800 above referred to, full costs are allowed in the cases mentioned in the first and second sections of this act. The provision contained in the 8th section was copied from an act of 1793—(See chap. 124, sec. 3.) Sections 10 and 11 are incomplete without the 17th section of the 4th chap. of 1748, which has never been repealed—It is as follows:

“XVII. And that upon appearance of the defendant in any personal action, where the plaintiff shall move that the defendant may be held to special bail, the court may, if they see cause, rule him to give bail accordingly, or commit

NOVEMBER SESSION,

1796.

him in custody of the sheriff till such bail be given; and the person and persons becoming special bail shall be liable to the judgment and recovery against such defendant, unless he render his body in execution in discharge of his bail."

It is remarkable that the form of our recognizances of bail differ materially from those which obtain in the English practice; yet no act of assembly either of Virginia or Kentucky is remembered which changes the form of those taken in court—The form of those taken out of court, depends on an act of 1761.

ACTS OF 1761, CHAP. V, BODY OF LAWS, page 380.
(An ACT for taking special bail in the country upon actions and suits in the general court.)

I. FOR the greater ease and benefit of all persons whatsoever in taking the recognizance of special bail on all actions and suits depending, or to be depending, in the general court of this colony, *Be it enacted, by the Lieutenant-Governor, Council and Burgeses of this present General Assembly, and it is hereby enacted by the authority of the same,* that the judges or justices of the general court of this colony shall and may, by order of the said court, from time to time, as need shall require, empower such and so many persons as they shall think fit and necessary, in all and every the counties within this colony, to take and receive all and every such recognizance or recognizances of bail as any person or persons shall be willing or desirous to acknowledge or make before any of the persons so empowered, in any action or suit depending, or hereafter to be depending, in the said general court, *de bene esse*; which recognizance shall be in the following words, to wit:

"MEMORANDUM, that upon the _____ day of _____ in the year of our Lord _____ E. F. of the county of _____ personally appeared before me, G. H. gentleman, one of the persons appointed by the honorable the general court for taking special bail within the said county of _____ and undertook for C. D. at the suit of A. B. in an action of _____ now depending in the said general court, that in case the said C. D. shall be cast in the said suit he the said C. D. will pay and satisfy the condemnation of the court, or render his body to prison in execution for the same, or that he the said E. F. will do it for him."

II. *And be it further enacted by the authority aforesaid,* That the person taking such bail as aforesaid shall, at the same time deliver to the person or persons acknowledging the recognizance aforementioned a bail piece, in the form and words following, to wit:

"_____ County *sc.* _____ C. D. of the parish of _____ in the county aforesaid, is delivered to bail on a *Capi Corpus* unto E. F. of the parish and county aforesaid, at the suit of A. B. the _____ day of _____ in the year of our Lord 17 ____."

The provision contained in the first part of the 16th section is incomplete, and stands connected with an act of 1772, chap. 6. sec. 1.

(An ACT for altering the method of suing out writs of alias *capias*, and other process, in the county courts, for regulating certain expences on attachments and writs of execution, and for altering the court days of certain counties.)

I. WHEREAS the laws, as they now stand, restrain the clerks of the county courts within this colony from issuing any writs of alias *capias*, renewing any petitions, or other process, where the original process hath not been executed, until such new process shall be ordered by the court of such county; and whereas it frequently happens that such courts, neglecting to sit to order such new process, the honest creditor is obliged to pay the costs of his original process, or run the risk of losing his just debt: To remedy which evil, *Be it enacted, by the Governor, Council, and Burgeses, of this present General Assembly, and it is hereby enacted by the authority of the same,* that when the sheriff or any

other officer, of any county within this colony, shall return any writ, petition, or other process to him directed, into the clerk's office of such county, by which return it shall appear to the clerk that the said process hath not been executed, it shall and may be lawful for such clerk, and he is hereby required, at the request of the party at whose instance the same was originally sued out, or his attorney, to issue an alias capias, or renew such process, without the formality of having such suit called in court; any law, custom, or usage to the contrary notwithstanding."

1796.

See also the act of 1800 before referred to.

The reader is requested to bear in mind that the repealing clause which attaches to this act, is vague in its expression and limited in its operation, consequently it will be safest to consider all laws regulating the practice of courts which were then in force, and which do not conflict with the provisions of this act, as remaining in force; and that the deficiencies which may be found in this act, may be supplied from such laws.

The first act establishing quarter session courts in Kentucky, contains the following provision: "*The said courts shall be attended and obeyed by the same officers, and the same mode of proceedings shall be had therein as is by law now directed to be had in the county courts, or the supreme court for the district of Kentucky, as the case may be.*"—Chap. 23, sec. 6.

This leads to an enquiry what was the mode of proceedings in the said supreme court? The act establishing that court, passed at the May session, 1782, after several provisions which have been since re-enacted or otherwise superse-
ded, has the following:

"II. *And be it further enacted*, That where it is not otherwise directed by this act, all officers of the said court shall have the same powers, perform the same duties, and be entitled to the same fees as are given to, required of, or payable to the like officers of the high court of chancery and general court; and that in all cases not hereby particularly provided for, the said court shall be governed by the laws and regulations now in force in the high court of chancery and general court."

In 1787 the following provisions were made respecting that court:

ACTS OF 1787, CHAP. XII. page 14.

(*An act to amend an act "for establishing a District Court on the western waters."*)

Sec. I. Whereas all the citizens of this commonwealth are entitled to uniform government, and it is doubtful whether the laws that have passed since the establishment of the supreme court for the district of Kentucky, regulating the proceedings to be had in the high court of chancery and the general court do extend to the said supreme court, in those cases where the court is not particularly named:

Sec. II. *Be it enacted by the general assembly, and it is hereby declared*, That all laws that have been enacted since the establishment of the said supreme court, and that hereafter may be enacted, relative to the jurisdiction of the high court of chancery and general court of this state, and for regulating judicial proceedings in either of them, do, and shall extend to the said supreme court, in all cases where for public convenience it is not in such acts otherwise provided, and the said supreme court expressly excepted.

Sec. III. *And be it further enacted and declared*, That the said supreme court has been, and shall be at all times subsequent to the institution thereof, invested with the same powers and subject to the same regulations within the said district, as by law has been or shall from time to time be exercised by the said high court of chancery and general court in the other parts of the state; and that all conveyances for lands within the said district, and all deeds admitted to record in the said supreme court, on due proof, acknowledgment or certificate; all licences granted by examiners appointed by the said court, or by the

1796.

judges thereof, to attorneys, counsellors, or proctors at law for the district; with all and every other proceeding and proceedings in the said supreme court, which are conformably to the proceedings of the said high court of chancery and general court, as the case requires, and that are authorized by law at the time being, are and shall be, and are hereby declared to be good and valid; any seeming ambiguity or contrariety that is in the laws thereto respecting, notwithstanding."

The reader will infer from hence that all the rules of practice in the general court, high court of chancery and county courts of Virginia, were extended by legislative acts to the state of Kentucky, made the rules of proceeding in the quarter session, and since in the circuit courts.

There is another class of Virginia laws which have never been directly extended to Kentucky by any legislative act, viz.—The laws regulating the court of appeals and the district courts of Virginia. How far the former were extended by the constitution, might be a perplexing question, if there was any necessity for determining it. As to the latter, district courts were first effectively established by an act of 1788, entitled "an act to establish district courts, and for regulating the general court." It is presumed that every provision in that act, and the subsequent ones which were not exclusively confined to the district courts, but were common to them and the general court, were extended by the act of 1787 to the supreme court of Kentucky.

The county court law of 1787 passed some days after the passage of the district court law of that session, and in giving rules of proceeding to the county courts in certain cases, declared that they should be the same as were directed in the district courts in such cases—(Acts of 1787, chap. 10.) The district court law of that session was suspended at its passage, and was repealed the next session by another district court law, which contained all the rules which had been adopted from the other by the county court law of 1787. It seems to have been taken for granted by the legislature of Virginia, either that the repeal in 1788 did not abrogate the law of 1787, as far as it was made binding on the county courts—or if it did, that the county court law of 1787 attached itself to the same provisions which were re-produced by the act of 1788. Hence the general court and county courts of Virginia seem to have been conducted by which the rules of practice of the district courts of Virginia have been conveyed to Kentucky. It must however be remarked that this observation does not apply to those rules of proceeding which were peculiar to the district courts, and in which the general court or county courts of Virginia had no participation.

It seems to have been the wish of the legislature in 1787 to have brought all the county court law "into one point of view;" they however effected but a small part of this design, and the repealing clause refers only to the acts "coming within the purview of this act." The legislature of 1785 appear to have had the same design, and carried it so far as to repeal "all and every other act or acts, clause and clauses heretofore made for or concerning any matter or thing within the purview of this act;" but this they might very innocently do, for there were but few "matters or things" contained in that act: In short, the great county court act of 1748 is the latest generally repealing law on that subject.

The present general court of Virginia was established by an act of 1777, which comes very near repealing all former general court laws—The repealing words are, "all other acts so far as they relate to any matter or thing contained or within the purview of this act, are hereby repealed;" and it may be added that the legislature of Virginia seem to have acted under an impression that the acts regulating the general court of the colonial government, did not apply to the new general court, (Chap. 40, May session, 1783.) On this act it may not be amiss to remark, that among many provisions which have been re-enacted in Kentucky, it contains the following, which will not be found in the code of our state—Section 6, authorises the court to appoint one or more assistant clerks, a crier and tipstaff, to hold their offices during good behaviour; section 7, pro-

wides for the return of writs of *prohibition*, which may be considered as a statutory acknowledgment that these writs had not then become illegal from *non-user*.

It likewise occurs that by this act an office judgment confirmed, was to be entered as a judgment of the 8th day of that term in which it was confirmed; whereas the old general court law pursuing the English doctrine, had made it a judgment of the preceding term, by which it was made a lien by relation before it had existence.

An act of May session, 1783, chap. 60, entitled "an act to enable the general court to settle and adjust costs," declares, that on all motions it shall be lawful for the court to give or refuse costs at their discretion, and in all other causes where the plaintiff shall recover debt or damages, the costs shall be governed by the laws now in force.

The first part of this provision was repealed, as far as relates to motions for continuances, by the district court law of 1795, chap. 201, and the latter part is controlled by the 2d section of the act of 1796, now under consideration.

The proceeding by motion with notice constitutes no inconsiderable part of our law respecting civil proceedings; yet we have no act declaring generally what shall be a legal notice; the ample provisions of the Virginia acts are as follows:

ACTS OF 1783, OCTOBER SESSION, CHAP. I. sec. 10.

"X. And to explain what shall be legal notice, *Be it enacted*, That in all cases of delinquency by the sheriffs or collectors of the public revenue, when a motion is intended to be made against them, affidavit before any justice of the peace within this commonwealth, that notice of such intended motion shall have been made, either by delivery thereof to the party, or in case he shall not be found at his usual place of abode, by leaving the same thereat for him, ten days before such motion is to be made, shall be held, deemed, and taken as sufficient and legal notice.

The act to amend an act reforming county courts, 1787, chap. 10, sec. 2.

"Notice in writing of motions upon replevin bonds, and against delinquent sheriffs and other officers, if left with the wife or other free person over the age of twenty-one years, other than a negro or mulatto, belonging to the family of such obligor, sheriff or other officer, ten days before the making such motion and at his or their usual place of abode, upon affidavit thereof being made, shall be deemed sufficient."

The act establishing district courts and for regulating the general court—(Acts of 1788, chap. 67, sec. 79.)

"LXXIX. Notice on replevy bonds, and all other legal occasions, wherein no particular mode is, or shall be prescribed, shall be good if given to the party in person, or delivered in writing to any free white person above the age of sixteen years, who shall be a member of the family of such person, and shall be informed of the purpose of such notice, or left at some public place at the dwelling house, or other known place of residence of such person."

The 28th section and all succeeding to the 44th, inclusive, are literally copied from an act of 1789, chap. 28, except that in the Virginia act after "for not alledging as appeareth by the record," follows this extensive provision, "or for omitting the averment of any matter without proving which the jury ought not to have given such a verdict." This act [of 1789] concludes by declaring that all things therein contained shall be the rules of proceeding in all courts whatsoever within this commonwealth. There is no pretence for saying that any part of this act has ever been repealed; in fact it has not been the practice either of Virginia or Kentucky to repeal any statutes of jeofail or amendment, which are probably the only kind of laws which they have not repealed. The statutes of England, Virginia and Kentucky are all cumulative, and taken col-

1796.

1796

actively will certainly legalize a dispensation with every thing resembling beauty or form of comeliness in judicial proceedings.

The first Virginia act remaining in force on the subject, is an act of 1748, chap. 4. sec. 20—"And for the prevention of delay and vexation by dilatory pleas, it is hereby enacted, that in all personal actions, where the declaration shall plainly set forth sufficient matter of substance for the court to proceed upon the merits of the cause, the suit shall not abate for want of form."

In 1753 a more ample provision was made by chap. I. sec. 25.

"And that for prevention of delay by arresting judgments and vexatious appeals, the several acts of parliament commonly called the statutes of jeofails, now in force and use in England, shall be and are hereby declared to be, for so much thereof as relates to any mispleading, jeofail, and amendment, in full force in this dominion also."

In 1788, chap. 67, section 63, the paragraph last quoted was re-enacted in the terms following: "The statutes of jeofails which passed prior to the year 1753, are declared to be in force." As there is certainly a difference between statutes of amendment and statutes of jeofail, a question may arise whether the former were extended by this act; though they certainly were by the act of 1753, and most of them by the ordinance of 1776. A view of these acts will convince the reader that there has been little occasion for Kentucky legislation on this subject.

By 14 Ed. 3. c. 6, it is enacted "That by the misprision of a clerk in any place whatsoever it be, no process shall be annulled or discontinued by mistaking in writing one syllable or one letter too much or too little; but as soon as the thing is perceived by challenge of the party, or in other manner, it shall be hastily amended in due form, without giving advantage to the party that challengeth the same because of such misprision."

By the 8 H. 6. cap. 12, it is enacted, "That for error assigned in any records, process or warrant of attorney, original writ, or judicial pannel or return, by razing or interlining, or by addition, subtraction, or diminution of words, letters, titles, &c. no judgment or record shall be reversed or annulled, but the judges, in any record, process, word, plea, warrant of attorney, writ, pannel or return in affirmance of judgment, may amend all that which to them seems to be the misprision of the clerk, (except appeals, indictments of treason, felony and outlawries of the same, and the substance of the proper names, surnames and additions left out in originals and exigents, contrary to the 1 H. 5. c. 5. and other writs containing proclamation;) and if certified defective, the parties in affirmance of judgment may allege the variance between the record and certificate, and if found and certified it shall be amended."

"By the 8 H. 6. cap. 15, the judges in any records or processes before them by error or otherwise, or in returns of sheriffs, coroners, bailiffs of franchises, or others, may amend the misprision of the clerks of the courts, or of the sheriffs, coroners, their clerks, and other officers whatsoever, in writing a letter or syllable too much or too little."

The 32 H. 8. cap. 30. enacts, "That if any issue be tried by the oath of twelve men, for the party plaintiff or demandant, or for the party tenant or defendant, in any courts of record, judgment shall be given, any mispleading, lack of colour, insufficient pleading or jeofail, any miscontinuance or discontinuance or misconveying of process, misjoining of the issue, lack of warrant of attorney of the party against whom the issue shall be tried, or other negligence of the parties, their counsellors or attorneys, had or made to the contrary thereof notwithstanding; and the judgment shall stand according to the said verdict, without reversal."

By the 18 Eliz. cap. 14. it is enacted, "That after verdict given in any action, suit bill, plaint or demand in any court of record, judgment thereupon shall not be stayed or reversed for want of form touching false Latin or vari-

ance from the *register* or other faults in form, in any writ original or judicial, count, declaration, plaint, bill, suit or demand: or for want of any writ original or judicial, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or for any fault in process, upon or after any aid prier and voucher."

By the 21 *Jac. 1 cap. 13.* it is enacted, "That after verdict for plaintiff or defendant, defendant or tenant, bailly in assize, vouchee, praice in aid, or tenant by receipt, in any action, suit, bill, plaint or demand, in any court of record, judgment thereupon shall not be stayed or reversed for any variance, in form only, between the original or bill, and the declaration, plaint and demand, or for lack of the averment of any life, so it be proved the person living, or because the *venire, habeas corpora* or *disfringas* was awarded to a wrong officer upon any insufficient suggestion, or for that the *visne* is in some part misawarded, or sued out of more or fewer places than it ought to be, so as some one place be right named, or for mis naming any of the jurors in surname or addition, in any of the writs or returns thereof, so as they be proved to be the same as were meant to be returned; or for that there is no return upon any of the writs, so as a pannel be returned and annexed thereto; or for that the sheriff or other officer's name is not set to the return of such writ, to as it appear by proof the writ was returned by him; or for that the plaintiff in ejectment, or other personal action, being under age, appeared by attorney, and the verdict passed for him."

By the 16 & 17 *Car. 2. cap. 8.* it is enacted, "That after verdict in any action, suit, bill or demand, in the courts of record at Westminster, county palatine of Chester or Durham, or of the great sessions in Wales, judgment thereupon shall not be stayed or reversed for want of form or pledges, sheriff's name returned upon the original, or, for want of pledges, upon any bill or declaration, or for want of a *profert in curia* of any deed, or of letters testamentary, or of administration, or for the omission of *vi & armis, or contra pacem*, or for the mistake of the christian or surname of either party, sums, day, month or year, in any bill, declaration and pleading, being right in any writ, plaint, roll or record preceding, or in the same, to which the plaintiff might have demurred and shewed the same for cause, or for want of *hoc paratus est verificare, or hoc paratus est verificare per recordum, or prout patet per recordum*; or for that there is no right venue; so as a trial was by a jury of the proper county or place where the action is laid; nor shall any judgment after verdict, confession by *cognovit, actionum* or *relieta verificatione*, be reversed for want of a *miser cordia* or a *capiatur*, or because one is entered for the other; nor for that *ideo concessum est per urion* is entered for *ideo consideratum est, &c.* or for that the increase of costs after verdict in an action, or upon a non-suit in replevin, are not entered to be at the request of the party for whom the judgment was given, nor by reason that the costs in any judgment whatsoever, are not entered to be by consent of the plaintiff; and that all such omissions, variances and defects, and other matters of like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered, shall be amended where such judgments are or shall be removed by writ of error."

By the 4 *Ann. cap. 16.* for the amendment of the law, it is enacted, "That where any demurrer shall be joined and entered in any action or suit in any court of record, the judges shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission or defect in any writ, return, plaint, declaration or other pleading, process or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission or defect might have heretofore been taken to be matter of substance, and not aided by the 27 *Eliz. c. 5.* so as sufficient matter appear in the said pleadings; upon which the court may give judgment according to the very right of the cause, and no advantage or exception shall be taken

1796.

of or for an immaterial traverse, or of or for the default of entering pledges upon any bill or declaration, or of or for the default of alleging the bringing into court, any bond, bill, indenture or other deed whatsoever, mentioned in the declaration or other pleading, or of or for the default of alleging of the bringing into court letters testamentary or letters of administration, or of or for the omission of *vi & armis*, *& contra pacem*, or either of them, or of or for the want of averment of *hoc paratus est verificare*, or *hoc paratus est verificare per recordum*; but the court shall give judgment according to the very right of the cause, as aforesaid, without regarding any such imperfections, omissions and defects, or any other matter of like nature, except the same shall be specially and particularly set down and shewn for cause of demurrer."—And, "That all the statutes of *jeofails* shall be extended to judgments which shall be entered upon confession, *nihil dicit* or *non sum informatus*, in any court of record, and no such judgment shall be reversed, nor any judgment upon any writ of inquiry of damages executed thereon, be stayed or reversed for or by reason of any imperfection, omission, defect, matter or thing whatsoever, which would have been aided or cured by any of the said statutes of *jeofails*, in case a verdict of twelve men had been given in the said action or suit, so as there be an original writ or bill, and warrants of attorney duly filed according to the law as is now used."

By the 5 *Geo. 1. c. 13.* it is enacted, "That all writs of error wherein there shall be any variance from the original record, or other defect, may and shall be amended and made agreeable to such record, by the respective courts where such writ or writs of error shall be made returnable, and that where any verdict hath been or shall be given in any action, suit, bill, plaint or demand, in any of his majesty's courts of record, the judgment thereupon shall not be stayed or reversed for any defect or fault, either in form or substance, in any bill, writ original or judicial, or for any variance in such writs from the declaration or other proceedings."

Also by the 4 *Ann. cap. 16.* for amendment of the law, it is enacted, "That all the statutes of *jeofails* shall extend to all suits in any of her majesty's courts of record at Westminster, for recovery of any debt immediately owing, or any revenue belonging to her majesty, her heirs or successors, and shall also extend to all other courts of record."

And by the 9 *Ann. cap. 20. sec. 7.* it is enacted, "That the statute for the amendment of the law, and all the statutes of *jeofails* shall be extended to [all writs of *mandamus* and] informations in nature of a *quo warranto*, and proceedings thereon for any the matters in the said act mentioned."

See also acts of 1799, vol. II. chap. 210.

The last section of this act applies to caveats, on which we may observe that it declares that no appeal or writ of error shall be allowed on a judgment rendered on a caveat; yet an act passed the same day, and taking effect on the same day with this, says that writs of error shall upon the demand of the party applying for the same, be issued as matter of right; except in those cases which may be brought before and determined by the district courts under the criminal jurisdiction of said courts, (Chap. 277.)

SECTION 1. *BE it enacted by the general assembly,* That in all actions of assault and battery, and slander commenced in any court in this commonwealth, if the jury find under forty shillings, the plaintiff shall not recover any costs.

SEC. 2. In all actions of trespass, and all other personal actions, where the court before whom the trial shall be, shall not be satisfied, and enter upon the record, that the freehold, title or interest of land mentioned in the

plaintiff's declaration, was or might have been in question, or that the trespass was wilful or malicious ; if the jury find under forty shillings, the plaintiff shall not recover more costs than damages ; and if more costs are awarded, the judgment shall be void, and shall be amended upon motion at any time by the court who awarded the same, and the party injured shall be redressed as to costs so wrongfully awarded, in case the same be levied upon him ; and where several persons shall be made defendants in actions of trespass, assault, false imprisonment or ejection, and upon the trial thereof any one or more of them shall be acquitted by verdict, every defendant so acquitted, shall have and recover his costs of suit in like manner as if verdict had been given against the plaintiffs and acquitted all the defendants, unless the court before whom such cause shall be tried, shall be satisfied that there was reasonable cause for the making such person or persons defendant or defendants to such action, and shall order it otherwise : and in all cases where judgment shall be given for the defendant, he shall recover his costs against the plaintiff, and have execution for the same.

1796.

Where the defendant shall have his costs.

SEC. 3. *Provided always*, That nothing herein contained shall construed to extend to executors or administrators in such case where by the law they are not liable to payment of costs of suit.

Exceptions.

SEC. 4. In all actions of trespass *quare clausum fregit* hereafter to be brought, wherein the defendant or defendants shall disclaim in his or their plea to make any title or claim to the land in which the trespass is supposed to be done by the declaration, and the trespass be by negligence or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought, whereupon, or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue ; and if the said issue be found for the defendant or defendants, the plaintiff or plaintiffs shall be non-suited. The plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suits concerning the same.

In certain actions the defendants may plead a disclaimer, & tender of amends.

SEC. 5. In all cases wherere the plaintiff shall die, after an interlocutory judgment, and before final judgment obtained therein, such action shall not abate, if the same

Where suit shall not abate by death.

1796.

might be originally prosecuted and maintained by the executors or administrators of such plaintiff; and if the defendant die after such interlocutory judgment, and before final judgment, such action shall not abate, if the same were originably maintainable against the executors or administrators of such defendant; but the plaintiff (or if he be dead after such interlocutory judgment, his executors or administrators) shall and may have a *scire facias* against the defendant if living after such interlocutory judgment, (or if he died after, against his executors or administrators) to shew cause why damages in such action shall not be assessed and recovered by the plaintiff or plaintiffs; and if such defendant or his executors or administrators shall appear at the return of such writ, and not shew or alledge any matters sufficient to arrest the final judgment, or being returned warned, or upon two writs of *scire facias* it be returned, that the defendant or his executors or administrators had nothing whereby to be summoned, or could not be found in the county, shall make default, a writ of enquiry of damages shall be thereupon awarded, which being executed, judgment final shall be given for the said plaintiff, his executors or administrators, prosecuting such writ or writs of *scire facias* against such defendant, his executors or administrators: and if there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of action should survive to the surviving plaintiff or plaintiffs, against the surviving defendant or defendants, the writ or action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants: and in all actions real, personal and mixed, if either party shall die between verdict and judgment, such death shall not be pleaded in abatement, but judgment shall be entered as if both parties were living.

Rules in actions for non-performance of covenants.

SEC. 6. In all actions upon any bond, or on any penal sum for non-performance of covenants or agreements in any indenture, deed or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit; and the jury, upon trial of such action or actions, shall and may assess damages for such of the breaches as the plaintiff shall prove to have been broken; and on such verdict the like judgment shall be entered as heretofore has been usually done in such actions; and where judgment on a demurrer or by confession, or *nihil*

dict shall be given for the plaintiff, he may assign as many breaches of the covenants or agreements as he shall think fit; upon which a jury shall be summoned to enquire of the truth of every one of those breaches, and to assess the damages the plaintiff shall have sustained thereby, and execution shall issue for so much, and such judgment shall remain as security to the plaintiff, his executors and administrators, for any other breaches which may afterwards happen; and he or they may have a *scire facias* against the defendant, and assign any other breach, and thereupon damages shall be assessed, and execution issued as aforesaid: and in all actions which shall be brought upon any bond or bonds for payment of money wherein the plaintiff shall recover, judgment shall be entered for the penalty of such bond to be discharged by payment of the principal and interest due thereon, and the other costs of suit, and execution shall issue accordingly; or, if before judgment the defendant shall bring into court the principal and interest due upon such bond, he shall be discharged; and in that case judgment shall be entered for the costs only. And in any action of debt on single bill, or in debt, or *scire facias* upon a judgment, or in debt upon bond, if before action brought the defendant hath paid the principal and interest due by the defeasance or condition, he may plead payment in bar.

SEC. 7. All powers of attorney for confessing or suffering judgment to pass by default or otherwise, and all general releases of error made or to be made by any person or persons whatsoever in this commonwealth before action brought, shall be, and are hereby declared to be absolutely null and void; and if any attorney or other person practising as an attorney, shall presume to appear under such power for any defendant in any court of record within this commonwealth, such attorney shall, for every such offence, forfeit and pay five hundred pounds, current money, to such defendant for his own use, to be recovered with costs by action of debt or information, in any court of record; and moreover, shall be liable to an action for damages at the suit of the party grieved.

SEC. 8. No suit shall hereafter be commenced in any court within this commonwealth by a non-resident, until he shall file in the clerk's office of such court, bond with approved security, who shall be a resident of this state, conditioned for the payment of all costs that may accrue

1796.

On bonds for the payment of money.

Debt.

Powers of attorney to confess judgment void.

Non-residents to give bond for costs.

1796.

in consequence thereof, either to the opposite party or to any of the officers of such court ; and the same may be put in suit by any of the persons aforesaid, for the non-payment of the sums that may respectively become due to them.

Process in real actions.

SEC. 9. The process in all real actions shall be the same as is used, and have the same effect as in England, except that the returns shall be according to the laws of this commonwealth : but all essoins, views and vouchers, be, and are hereby taken away ; and after one imparlance, unless the tenant shall plead non-tenure, joint-tenancy, or several tenancy in abatement ; and then, after such plea shall be over-ruled, he shall put himself upon the grand assize, and the mise shall be joined upon the mere right, and be tried at the next court by sixteen jurors to be summoned, tried and sworn as in all other actions—And to remove all delays and groundless pretences in saving the default of the tenant, no excuse shall be admitted, but non-summons ; and such excuse being allowed, he may imparle, and at the next court shall either plead in abatement, or put himself upon the grand assize as aforesaid.

The species of action to be endorsed on the writ,

SEC. 10. In all actions to recover the penalty for breach of any penal law not particularly directing special bail to be given, in actions of slander, trespass, assault and battery ; actions on the case of trover or other wrongs, and all personal actions (except such as shall be herein particularly mentioned) the plaintiff, or his attorney shall, on pain of having his suit dismissed with costs, endorse on the original writ or subsequent process, the true species of action, that the sheriff to whom the same is directed, may be thereby informed whether bail is to be demanded on the execution thereof ; and in the cases before mentioned the sheriff may take the engagement of an attorney practising in the said court, endorsed upon the writ, that he will appear for the defendant or defendants. Every attorney failing to enter an appearance according to such engagement, shall forfeit to the defendant fifty shillings, for which judgment shall be immediately entered and execution may issue thereupon ; and although no such engagement of an attorney shall be offered to the sheriff, he shall, nevertheless, be restrained from committing the defendant to prison, or detaining him in his custody for want of appearance bail ; but the

Penalty on an attorney for failing to enter an appearance.

sheriff in such case shall return the writ executed, and if the defendant shall fail to appear thereto there shall be the like proceedings against him only, as is hereafter directed against defendants and their appearance bail, where such is taken. *Provided always*, that any judge of a district court, or justice of a court of quarter sessions, in actions of trespass, assaults and battery, trover and conversion, and in actions on the case, where, upon proper affidavit or affirmation, it shall appear to him proper that the defendant or defendants shall give appearance bail, may and is hereby authorised to direct such bail to be taken by endorsement on the original writ or subsequent process, and every sheriff shall govern himself accordingly.

SEC. 11. In all actions of debt founded on any writing obligatory, bill or note in writing, for the payment of money or tobacco; all actions of covenant or detinue (in which cases the true species of action shall be endorsed on the writ as before directed, and that appearance bail is to be required) the sheriff shall return on the writ the name of the bail by him taken, and a copy of the bail-bond to the clerk's office before the day of appearance; and, if the defendant shall fail to appear accordingly and give special bail (being ruled thereto by the court) the bail for appearance may defend the suit, and shall be subject to the same judgment and recovery, as the defendant might or would have been subject to if he had appeared and given special bail: and in actions of detinue the bail-piece shall be so changed as to subject the bail to the restitution of the thing, whether animate or inanimate sued for, or the alternate value as the court may adjudge: and if the sheriff shall not return bail and a copy of the bail-bond, or the bail returned shall be adjudged insufficient by the court, and the defendant shall fail to appear and give special bail, if ruled thereto, in such case the sheriff may have the like liberty of defence, and shall be subject to the same recovery as is provided in the case of appearance bail: and if the sheriff depart this life before judgment be confirmed against him, in such case the judgment shall be confirmed against his executors or administrators; or if there shall not be a certificate of probate or administration granted, then it may be confirmed against his estate, and a writ of *fieri facias* may in either case be issued: to the plaintiff

1793.

Judge or justice
may direct bail
to be taken in
certain actions.

Actions in
which bail is
required.

Sheriff to re-
turn copy of the
bail bond.

Bail may de-
fend the suit.

Bail-piece in
detinue.

Sheriff may de-
fend suit in cer-
tain cases.

1796

Sufficiency of
bail determin-
ed.

Office judg-
ments when to
be set aside.

Court to regu-
late the pro-
ceedings in the
office.

Proceedings by
sheriff or bail
against a de-
fendant.

Who may take
special bail.

shall object to the sufficiency of the bail during the sitting of the court next succeeding that to which the writ is returnable, or in the office on the first or second rule day, and at no time thereafter.

SEC. 12. And all questions concerning the sufficiency of bail so objected to in the office, shall be determined by the court at their next succeeding term; and in all cases where the bail shall be judged insufficient, and judgment entered against the sheriff, he shall have the same remedy against the estate of the bail as against the estate of the defendant: and every judgment entered in the office against a defendant and bail, or against a defendant and sheriff, shall be set aside, if the defendant at the succeeding court shall be allowed to appear without bail, put in good bail, (being ruled so to do) or surrender himself in custody and plead to issue immediately. The court shall regulate all other proceedings in the office during the preceding vacation, and rectify any mistakes or errors which may have happened therein. In every case where judgment shall be confirmed against any defendant or defendants and bail, or the sheriff, his executors or administrators, or estate as aforesaid, the court, upon motion of such bail, or of such sheriff, his executors or administrators, or any other person on behalf of his estate, may order an attachment against the estate of the defendant or defendants, returnable to the next succeeding court; and upon the execution and return of such attachment, the court shall order the estate seized, or so much thereof as will be sufficient to satisfy the judgment and costs, and all costs accruing under the attachment, to be sold as goods taken in execution upon a *fiери facias*, and out of the money such judgment and costs shall be satisfied, and the surplus (if any) restored to the defendant or defendants when required.

SEC. 13. Any judge of a district court or any justice of the peace, may take recognizance of special bail in any action therein depending, which shall be transmitted by the person taking the same before the next succeeding court, to the clerk of the said court, to be filed with the papers in such action: and if the plaintiff or his attorney shall except to the sufficiency of the bail so taken, notice of such exception shall be given to the defendant or his attorney; least ten days previous to the day on which such exception shall be taken. And if such bail shall be

judged insufficient by the court, the recognizance thereof shall be discharged, and such proceedings shall be had as if no such bail had been taken. 1796.

SEC. 14. Every special bail may surrender the principal before the court where the suit hath been or shall be depending at any time either before or after judgment shall be given, provided such surrender be made before the appearance day of the first *scire facias* against the bail returned executed, or of the second returned *nihil*; but in either case the special bail shall pay the costs of the said *scire facias*, and judgment for the same shall be entered against him accordingly: upon such surrender the bail shall be discharged, and the defendant or defendants shall be committed to the custody of the sheriff or jailor attending such court, if the plaintiff or his attorney shall desire the same, or such special bail may discharge himself or herself, by surrendering the principal or principals to the sheriff of the county where the original writ was served; and such sheriff shall receive such defendant or defendants and commit him, her or them, to the jail of the said county, and shall give a receipt for the body or bodies of such defendant or defendants, which shall be by the bail transmitted to the clerk of the court where the suit is or was depending; when such render after judgment shall be to the sheriff, he shall keep such defendant or defendants in his custody in the same manner and subject to the same rules as are provided for debtors committed in execution for the space of twenty days, unless the creditor, his attorney or agent, shall sooner consent to his, her or their discharge. The bail shall give immediate notice of such render to the creditor, his attorney or agent; and if within the said twenty days such creditor, his attorney or agent, shall not, in writing, charge the debtor or debtors in execution, he, she or they shall be forthwith discharged out of custody; but the plaintiff or plaintiffs may, nevertheless, afterwards sue out any legal execution against such debtor or debtors, without suing out a *scire facias*.

SEC. 15. When the sheriff or other proper officer, shall return on any original or *mesne* process, that he hath taken the body of any defendant and committed him to prison for want of appearance bail, the plaintiff may proceed and the defendant make his defence in like manner as if his appearance bail had been entered and accepted;

Special bail
may surrender
principal.

Proceedings a-
gainst a defen-
dant in custody.

1796.

but the defendant shall not be discharged out of custody until he shall put in good bail, or the plaintiff shall be ruled by the court to accept an appearance without bail. And where any defendant after appearance entered shall be confined to prison, the plaintiff shall file his declaration, give a rule to plead, and deliver copies of such declaration and rule, to the defendant or his attorney : and if the defendant shall fail to enter his plea within two months after receiving such declaration and notice, the plaintiff may have his judgment by default as in other cases.

Plaintiff may
sue out an alias
& *pluries* capi-
as, &c.

Or attachment.

Proceedings
thereon.

SEC. 16. When the sheriff or other proper officer shall return on any writ of *capias*, to answer in any civil action, that the defendant "is not found within his bailiwick," the plaintiff may sue out an *alias* or a *pluries capias* until the defendant shall be arrested ; or if the suit has been commenced in a district court, a *testatum capias* where he shall be removed into another county, or may at his election sue out an attachment against the estate of the defendant to force an appearance ; and if the sheriff or other officer shall return that he hath attached any goods, and the defendant shall not appear and replevy the same, by entering his appearance and giving special bail, (in case he shall be ruled so to do) the plaintiff shall file his declaration, and be entitled to a judgment for his debt, or damages and costs ; which judgment shall be final in all actions of debt founded on any specialty, bill or note in writing, ascertaining the demand, unless the plaintiff shall chuse in any such case to have a writ of enquiry of damages ; and in other cases the damages shall be settled by a jury sworn to enquire thereof. The goods attached shall remain in the hands of the officer until such final judgment be entered, and then be sold in the same manner as goods taken upon *feri facias* ; and if the judgment shall not be thereby satisfied, the plaintiff may sue out execution for the residue ; and in case more goods be attached than will satisfy the judgment, the surplus shall be returned to the defendant.

Proceedings on
process execu-
ted, but not re-
turned.

SEC. 17. If any writ or process be executed, and for want of a return thereof to the office from which it issued, an *alias*, *pluries*, attachment, or other process be awarded, the sheriff shall not execute such subsequent process, but shall return the first process by him executed, if it be in his possession ; but if it be not in his possession,

then he shall return the subsequent process with an endorsement of the execution of such first process, and the name of the appearance bail, (if any was taken) and shall also return a copy of the bail bond, on which there shall be the same proceedings as if the said first process had been duly returned.

1796

SEC. 18. On writs of *scire facias* for renewal of judgments obtained either in district courts or courts of quarter sessions, no judgment shall be rendered on the return of two *nihilis*, unless the defendant reside in the district or county, as the case may be; or unless he be absent from the commonwealth, and have no known attorney within the same. But such *scire facias* may be directed to the sheriff of any county within this commonwealth, wherein the defendant or his attorney shall reside, or be found; which being returned served, the court may proceed to judgment thereupon as if the defendant had resided in the district or county.

On *scire facias*
to renew judgments.

SEC. 19. Rules shall be held monthly in the clerk's office of the several district courts, and courts of quarter sessions within this commonwealth, on the rule days which are or shall be appointed by the said courts.

Rules to be
held in the
clerk's office.

SEC. 20. The plaintiff shall file his declaration in the clerk's office at the next succeeding rule day, after the defendant shall have entered his appearance; or the defendant may then enter a rule for the plaintiff to declare, which, if he fail or neglect to do at the next succeeding rule day, or shall at any time fail to prosecute his suit, he shall be non-suited, and pay to the defendant or tenant (besides costs) one hundred and fifty pounds of tobacco, where his place of abode is at the distance of twenty-five miles or under from the place of holding said court; and where it is more, five pounds of tobacco for every mile above twenty.

When plaintiff
shall file his de-
claration.

SEC. 21. One month after the plaintiff hath filed his declaration, he may give a rule to plead with the clerk; and if the defendant shall not plead accordingly at the expiration of such rule, the plaintiff may enter judgment for his debt, or damages and costs.

When the de-
fendant shall
plead.

SEC. 22. All rules to declare, plead, reply, rejoin or for other proceedings, shall be given regularly from month to month, shall be entered in a book to be kept for that purpose, and shall expire on the succeeding rule day.

Rules to be gi-
ven monthly.

1796.

Pleas in abatement and non est factum to be on oath.

SEC. 23. No plea in abatement shall be admitted or received, unless the party offering the same shall prove the truth thereof by oath or affirmation, as the case may require; and no plea of *non est factum* offered by the person charged as the obligor or grantor of a deed, shall be admitted and received, unless the truth thereof in like manner be proved by oath or affirmation. And where any person other than the obligor shall be defendant, such defendant shall prove by oath or affirmation, that he or she verily believes that the deed on which the action is founded, is not the deed of the person charged as the obligor or grantor thereof; in which last mentioned case the plea of *non est factum* shall not be admitted or received without such oath or affirmation; and where a plea in abatement shall, upon argument, be judged insufficient, the plaintiff shall recover full costs to the time of over-ruling such plea, a lawyer's fee only excepted.

Several matters pleadable.

SEC. 24. The plaintiff in replevin, and the defendant in all other actions, may plead as many several matters, whether of law or fact as he shall think necessary for his defence.

Proclamation be awarded.

SEC. 25. On the return of *phuries*, that the defendant is not to be found, the court (instead of the process to outlawry formerly used) may order a proclamation to issue, warning the defendant to appear at a certain day therein named, or that judgment will be rendered against him; which proclamation shall be published on three successive court days at the door of the court-house of the county to which the last process was directed; and also three times in the Kentucky Gazette or Kentucky Herald; and if the defendant fail to appear pursuant to such proclamation, the same proceedings shall be had and the same judgment given as in other cases of default.

Proceedings thereon.

Office judgment not ter a. fide; when to be final.

SEC. 26. All judgments by default for want of an appearance or special bail or pleas as aforesaid, and nonsuits or dismissions obtained in the office, and not set aside in the district courts on the third day, and in the court of quarter sessions on the second day of the next succeeding term, shall be entered by the clerk as of those days; which judgment shall be final in actions of debt founded on any specialty, bill or note in writing, ascertaining the demand, unless the plaintiff shall chuse in any such case to have a writ of enquiry; and in all other

cases the damages shall be ascertained by a jury to be empannelled and sworn to enquire thereof.

SEC. 27. Before every district court or court of quarter sessions, the clerks of the said courts shall enter in a particular docket all such causes (and those only) in which an issue is to be tried, or enquiry of damages is to be made, or a special verdict, case agreed, or demurrer or other matter of law is to be argued, in the same order as they stand in the course of proceeding, setting as near as may be an equal number of causes to each day.

SEC. 28. No judgment after a verdict of twelve men shall be staid or reversed for any defect or fault in any writ, original or judicial, or for a variance in the writ, from the declaration or other proceedings, or any mispleading, insufficient pleading, discontinuance, misjoining of the issue, or lack of a warrant of attorney, or for the appearance of either party being under the age of twenty-one years by attorney, if the verdict be for him and not to his prejudice, or for not alledging any deed, letters testamentary or commission of administration, to be brought into court, or for omission of the words "with force and arms," or "against the peace," or for mistake of the christian name or surname of either party, sum of money, quantity of merchandize, day, month or year, in the declaration or pleading, the name, sum or quantity, or time, being right in any part of the record or proceedings, or for omission of the averment, "this he is ready to verify," or "this he is ready to verify by the record," or for not alledging as appeareth by the record; or for not alledging that the suit or action is within the jurisdiction of the court, or for any informality in entering up the judgment by the clerk; neither shall any judgment entered upon confession, or by *nihil dicit*, or *non sum informatus* be reversed, nor a judgment after enquiry of damages be stayed or reversed for any omission or fault, which would not have been a good cause to stay or reverse the judgment if there had been a verdict.

SEC. 29. When a demurrer shall be joined in any action, the court shall not regard any other defect or imperfection in the writ, return, declaration or pleading, than what shall be specially alledged in the demurrer, as causes thereof, unless something so essential to the action or defence, as that judgment according to law, and

1796.

Causes to be docketed.

How regulated.

Causes for which judgment shall not be staid or arrested.

Causes of demurrer to be specially shewn

1796. the very right of the cause cannot be given, shall be omitted.
- Private acts may be given in evidence. SEC. 30. Private acts of assembly may be given in evidence without pleading them specially.
- Juries de medietate linguae may be summoned. SEC. 31. Juries *de medietate linguae* may be directed by the court to be summoned.
- Jurors to give evidence. SEC. 32. Jurors knowing any thing relative to the point in issue, shall disclose the same in open court.
- May be fined for contempt. SEC. 33. Any juror guilty of a contempt to the court, shall be fined by the court any sum not exceeding ten pounds.
- Certain papers may be carried from the bar. SEC. 34. Papers read in evidence, though not under seal, may be carried from the bar by the jury.
- Sheriff not to converse with the jury. SEC. 35. No sheriff shall converse with a juror, but by order of the court.
- Interpreters may be sworn. SEC. 36. Interpreters may be sworn truly to interpret when necessary.
- When a nonsuit may be suffered. SEC. 37. Every person desirous of suffering a nonsuit on trial, shall be barred therefrom, unless he do so before the jury retire from the bar.
- How many new trials may be granted. SEC. 38. Not more than two new trials shall be granted to the same party in the same cause.
- No exception to declarations in ejectments. SEC. 39. After issue joined in an ejectment on the title only, no exception of form or substance shall be taken to the declaration in any court whatsoever.
- Scroll a sufficient seal. SEC. 40. Any instrument to which the person making the same shall affix a scroll by way of seal, shall be adjudged and holden to be of the same force and obligation as if it were actually sealed.
- Where prices, &c. is omitted in detinue. SEC. 41. If in detinue the verdict shall omit price or value, the court may at any time award a writ of enquiry to ascertain the same.
- If part omitted. SEC. 42. If on an issue concerning several things in one count in detinue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted.
- Where there are several counts. SEC. 43. Where there are several counts, one of which is faulty, and entire damages are given, the verdict shall be good, but the defendant may apply to the court to instruct the jury to disregard such faulty count.
- Proceedings in caveats. SEC. 44. A judgment on confession shall be equal to a release of errors.
- SEC. 45. The laws of costs shall not be interpreted as penal laws. The person who enters a caveat shall ex-

press therein the cause why a grant should not issue, and the nature of the right on which the plaintiff therein claims the said lands; at the time of entering such caveat, he shall file with the register an affidavit that such caveat is really and *bona fide*, made with an intention of procuring the lands for the persons in whose name such caveat is entered, and not in trust for the benefit of the person against whom such caveat is entered: and all caveats entered contrary to the directions of this act, shall be absolutely null and void. He shall take from the register a certified copy thereof, which within fifteen days thereafter, he shall deliver to the clerk of the district court, or court of quarter sessions, in which he means to prosecute the same, or such caveat shall become void; the said clerk on receiving the same, shall enter it in a book, and thereupon issue a summons, reciting the cause for which such caveat is entered, and requiring the defendant to appear; if in a district court, on the third day; or if in a court of quarter sessions on the first day of the succeeding court, and defend his right: whenever a summons on a caveat shall either not be returned at all, or be returned not executed, the caveat upon which such summons shall have issued, shall be dismissed with costs, unless the court (before such caveat shall be depending) shall be satisfied that the said summons (not having been executed) did not proceed from the neglect of the party who entered such caveat: on such process being returned executed, the court shall proceed to determine the right of the cause in a summary way without pleadings in writing, empannelling and swearing a jury for the finding such facts as are material to the cause, and are not agreed by the parties, and shall thereupon give judgment, on which no appeal or writ of error shall be allowed: A copy of such judgment (if in favor of the defendant) being delivered into the land office, shall vacate the said caveat; and if not delivered within three months, a new caveat may for that cause be entered against the grant: and if the said judgment be in favor of the plaintiff, upon delivering the same into the land office, together with a plat and certificate of the survey, and also producing a legal certificate of new rights on his own account, he shall be entitled to a grant therefor; but on failing to make such return, and producing such certificate within six months after judgment so rendered, it shall be lawful

1796.

Affidavit to be filed.

Copy of caveat to be lodged with the clerk.

Summons to issue thereon.

Court to proceed in a summary way.

Judgment, the effect of.

1796. for any other person to enter a caveat for that cause against issuing the grant; upon which subsequent caveat at such proceedings shall be had as is before directed in the case of an original caveat; and in any caveat where judgment shall be given for the defendant, the court shall award him his costs, and may compel the plaintiff in any caveat (if they think fit) to give security for costs, or on failure thereof, may dismiss his suit; and in case the plaintiff in any such caveat shall recover, the court may, if they think it reasonable, award costs against the defendant. For the removing all doubts concerning the courts to which this act may apply, *Be it further enacted*, That all things herein contained shall be the rules of decision and proceeding in all courts whatsoever within this commonwealth.

If for defendant he shall have costs.

If for plaintiff, he may have his costs.

Proceedings to apply to all courts.

CHAPTER CCLXV.

An ACT to reduce into one, the several acts establishing Courts of Quarter-Sessions, and directing the proceedings therein.

Approved December 19, 1796.

See the prælection to chap. 23.

As much of this act as established Quarter-Session courts was repealed by the circuit court law of 1802, (Vol. III. Chap. 43.) The time of execution and return of process provided for in the 5th section was altered in 1797, (Chap. 318.) The sixth section contains an important but much neglected provision. The case of *Littell vs. Nicholas's administrators* October 1806, was decided on the 7th section. The law of set-off in the 9th section is an amplification of a provision in an act of 1793, (Chap. 124.)

SECTION 1. There shall be in every county within this state, a court of quarter-sessions, which shall be so called, and shall consist of three justices to be appointed for that purpose; any two of them shall be sufficient to constitute a court. They shall meet at the place appointed for holding courts in each county, on the days and in the months hereafter directed; that is to say: for the county of Mason in the months of March, May, August and November, on the fourth Monday in the month. For the county of Bracken, in the months of March, May, August and November, on the first Monday in the month. For the county of Campbell, in the months of March, May, August and November, on the second Monday in the month. For the county of Bourbon, in the months of March, May, August and

How many justices to form a court.

When & where to meet.

Times of holding courts.

For Mason.

Bracken.

Campbell.

Bourbon.

October, on the third Monday in the month. For the county of Harrison, in February, April, June and September, on the first Tuesday in the month. For the county of Fayette, in the months of March, May, August and November, on the second Monday in the month. For the county of Clark, in the months of February, April, June and September, on the fourth Tuesday. For the county of Scott, in the months of March, May, August and November, on the fourth Monday in the month. For the county of Montgomery, in the months of February, April, June and September, on the second Tuesday in the month. For the county of Woodford, in the months of March, May, July and November, on the first Monday in the month. For the county of Franklin, in the months of March, May, July and October, on the third Tuesday in the month. For the county of Madison, in the months of February, April, June and September, on the first Tuesday in the month. For the county of Lincoln, in the months of February, April, June and September, on the second Tuesday in the month. For the county of Mercer, in the months of February, April, June and September, on the fourth Tuesday in the month. For the county of Nelson, in the months of February, April, June and October, on the second Tuesday in the month. For the county of Washington, in the months of March, June, August and October, on the first Tuesday in the month. For the county of Shelby, in the months of February, April, June and September, on the third Tuesday in the month. For the county of Jefferson, in the months of February, April and July on the first Tuesday in the month; and the month of September, on the last Tuesday in the month. For the county of Bullitt, in the months of January, March, July and October, on the fourth Tuesday in the month. For the county of Logan, in the months of February, April, June and September, on the fourth Tuesday in the month. For the county of Christian, in the months of February, April, June and September, on the third Tuesday in the month. For the county of Hardin, in the months of February, April, June and October, on the first Tuesday in the month. For the county of Green, in the months of March, May, August and October, on the third Tuesday in the month. And for the county

1796.

Harrison.

Fayette.

Clark.

Scott.

Montgomery.

Woodford.

Franklin.

Madison.

Lincoln.

Mercer.

Nelson.

Washington.

Shelby.

Jefferson.

Bullitt.

Logan.

Christian.

Hardin.

Green.

Warren.

-1796

The length of terms.

Powers and jurisdictions.

Exceptions.

May award injunctions, &c.

Grand juries—their powers & jurisdiction.

of Warren, in the months of February, April, June and September, on the first Tuesday in the month.

SEC. 2. They shall sit six judicial days, unless the business before them be determined sooner: they shall be conservators of the peace in their respective counties; and shall and may take cognizance of, and are hereby declared to have power, authority and jurisdiction, to hear and determine all causes whatsoever at common law, or in chancery, within their respective counties; except such criminal cases where the judgment, upon conviction, shall be for the loss of life or member; in which cases they shall have no jurisdiction, except as is hereafter expressly directed; and except also all causes of less value than five pounds, or one thousand pounds of tobacco. The said courts shall have jurisdiction of all matters respecting escheats and forfeitures arising within their respective counties; and in those cases escheators' returns shall be made thereto, and other proceedings had therein according to law; and in all cases they shall have concurrent jurisdiction with the district courts, except in the trial of criminals. The said court, or any two justices out of court, shall have power to award writs of *ne exeat*, injunctions and *habeas corpus*; and any justice thereof, or any justice of the peace, may take recognizance of special bail in any suit depending in any of the said courts; and grand juries shall be summoned, impanelled and charged according to law.

SEC. 3. The grand juries which may be summoned to attend the court of quarter-sessions, shall have power and authority to enquire into all breaches of the penal laws, whether the penalty by such law inflicted exceed the sum of five pounds, or one thousand pounds of tobacco, or not: and the said grand juries shall make presentment thereof, either upon the knowledge of two of their own body, or from the information of any other person; and in either case the names of the jurors or informant shall be set at the bottom of the presentment; but the said jurors shall in no instance be liable to any costs or suits in consequence of such presentment; and so much of the oath required by law to be taken by a grand jury, as relates to secrecy, shall be hereafter omitted; and no grand juror shall be obliged to present himself, or any other of his fellow jurors: and the said court of quarter-sessions shall have jurisdiction to hear and determine

any of the said presentments in a summary way, when the penalty incurred shall be less than fifteen dollars : but in all cases where the penalty incurred shall exceed fifteen dollars, or where it shall be uncertain, the trial shall be by a jury, who shall find the amount of the penalty or damages to be inflicted ; and in either case the court shall enter up judgment and award execution according to law : and no presentment of a grand jury shall be quashed or dismissed, because one or more of the said jurors were not qualified according to law, provided the remaining jurors be a sufficient number to constitute a grand jury.

1793.

SEC. 4. If but one justice of the court of quarter-sessions should meet on the first day of the court, it shall be lawful for such justice to adjourn the court from day to day for three days, unless a sufficient number can be sooner had to proceed to business.

Provision where
only one justice
attends.

SEC. 5. All original process by writ, or any other manner or means, and all subsequent process thereon, to bring any person or persons to answer to any action, real, personal or mixed, suit, information, bill or plaint, in any court of quarter-sessions ; and all attachments awarded by the said courts at the common law ; and all *subpoenas*, attachments, or other process in chancery, shall be issued and bear test by the clerk of every court of quarter-sessions respectively, returnable to the first day of the next succeeding court, and shall be executed three days at least before the day therein mentioned for the return thereof ; and if any process shall be delivered to the sheriff or officer, so late that he cannot execute the same three days before the return day, such process shall not be executed, but the officer shall return the truth of the case ; and if any original process be taken out within three days before the next court day, such process shall be returnable to the next court after the said three days and not otherwise ; and all process issued or returnable in other manner than is herein before directed, shall be null and void.

Process be
whom to bear
test, and when
returnable.

SEC. 6. *Provided nevertheless*, that any justice of the said court, or any justice of the peace, may, by his warrant, cause any traitor, felon, pirate, rioter, breaker of the peace or other criminal offender, to be apprehended, and brought before the next court of quarter-sessions, al-

Proviso.

1796.

No bail to be
demanded in a
certain case.

though there be not three days between the execution of such warrant and the return thereof.

SEC. 7. No bail shall be demanded on a writ of *capias ad respondendum*, which shall be issued against a resident of one county in another, until a *non est inventus* has been returned in the county in which the defendant resides, upon a *capias* issued in the same suit against such defendant; and every writ issued contrary thereto, without an endorsement of "no bail required," shall be voidable at any time before issue joined, or judgment by default, *nihil dicit* or *non sum informatus* thereon, but not afterwards, provided that no such writ issuing from the county in which the cause of action accrued, shall be voidable by reason of bail being required thereon.

Subpoenas in
chancery may
be awarded to
a different coun-
ty.

SEC. 8. The clerk of the court of quarter-sessions, on application, shall have power to issue *subpoenas* in chancery against any person who may be a resident of any other county, and the sheriff of the county to whom such *subpoena* is directed, shall execute and return the same (in like manner as if it had been issued by the clerk of his county) to the clerk of the county from whence it issued; and the person who may be served with such *subpoena* shall obey accordingly.

Set offs may
be given in evi-
dence, or plead-
ed.

SEC. 9. When any suit for any debt or demand is depending in any court of quarter-sessions, it shall be lawful for the defendant on trial, if the plaintiff should be indebted to him, to plead the same in discount, or by way of set-off, or to give the same in evidence on the general issue, provided he give notice in writing of the discount he means to give in evidence in the office at the time of putting in his plea; and provided he shall be allowed to give in evidence no discount but those of which notice is given, and if it appear to the satisfaction of the jury that the plaintiff is indebted to the defendant, they shall admit the same, and bring in a verdict for what may appear due either to the plaintiff or defendant, and judgment shall be entered up accordingly.

Where a writ
may issue to a
different coun-
ty.

SEC. 10. When two or more persons are bound jointly, or jointly and severally in any bond, or writing obligatory, and the persons so bound shall reside in different counties, it shall be lawful for the clerk of the court where the suit is brought against one of the obligors on the request of the plaintiff, to issue a *capias ad respondendum* against the other obligor or obligors, directed to the she-

V. YEAR OF THE COMMONWEALTH.

507

riff of the county where they may reside, and the sheriff shall execute and return the same, in the same manner as if the *capias* had issued from the clerk of his county.

1796.

SEC. 11. All office judgments set aside shall be immediately put at the end of the issue docket, and tried the same court in turn with the other issues, unless the plaintiff shall waive his right of trial until the next term.

Office judgments where to be placed.

SEC. 12. The clerk shall proportion the causes on the docket from the first day of the court to the sixth, both inclusive, if in his opinion so many days will be expended in trying the causes ready for trial ; and issue *subpoenas* for witnesses to attend on the days on which the causes stand for trial ; he shall docket the causes in order as they are put to issue ; and no cause shall be removed from its place on the docket, unless where the plaintiff at the calling of the same be unprepared for trial, in which case and no other shall the cause be put to the end of the docket.

Clerk to proportion causes on the docket.

SEC. 13. The clerk of the court shall carefully preserve the declarations, pleas, evidences and all other papers relating to any cause in court, and shall file them all together in the office.

To preserve pleadings.

SEC. 14. In all cases where the title or bounds of any estate in lands is determined, the pleadings shall all be in writing, and shall be entered at large with the judgment thereupon, in particular books to be kept for that purpose only.

Where to make complete records.

SEC. 15. And for preventing errors in entering the judgment of the court, the justices before every adjournment, shall cause the minutes of their proceedings to be publicly read by the clerk, and corrected where necessary ; and then the same shall be signed by the first justice in commission then sitting, which minutes so signed, shall be taken in a book and carefully preserved among the records ; and no proceedings or judgments of any court, shall be of force or valid, until the same be so read and signed.

Minutes to be read and signed.

SEC. 16. The said court shall form a court for the examination of prisoners ; and also a court of oyer and terminer for the trial of slaves.

Further powers.

SEC. 17. The justices of the court of quarter-sessions shall receive for their services twelve shillings for each day they shall respectively sit in the said courts, to become due on the tenth day of June and November annu-

Salary.
When due and how paid,

1796
County courts
when held.

Process, &c.
to be returned
to the courts as
herein directed
to be held.

ally ; for which sum, on a certificate from the clerk of the court, of the number of days they have attended, they shall receive a warrant from the auditor, which shall be paid at the public treasury. The county courts for the several counties, shall be held on the same day in every month that the courts of quarter-sessions are herein directed to be held, except in those months that the said court of quarter-sessions shall sit ; and all writs or process* of whatsoever nature, returnable to any day of the next quarter-session or county court in each county, shall be considered to all intents and purposes as returnable to the several courts as hereinafter directed to be held. And all bonds or recognizances for the appearance of any person or persons, at any of the said courts, shall be as valid to all intents and purposes, to compel such persons to appear at any of the said courts, as herein before directed to be held.

CHAPTER CCLXVI.

An ACT declaring when certain acts passed at the present session of the general assembly shall commence and be in force, and for other purposes.

Approved December 19, 1796.

Certain laws
when to com-
mence.

SECTION 1. *BE it enacted by the general assembly,* That the following acts, to wit: "An act establishing the court of appeals"—"An act to reduce into one the several acts establishing courts of quarter sessions, and for directing the proceedings therein"—"An act to reduce into one the several acts establishing county courts and regulating the proceedings therein, and concerning the appointment of justices of the peace and their jurisdiction"—"An act to reduce into one the several acts directing the rules and proceedings in the courts of chancery"—"An act to reduce into one the several acts for preventing vexatious suits, and regulating proceedings in civil cases"—"An act directing the mode of proceeding in courts of equity against absent debtors and other absent defendants, and for settling the proceedings on attachments against absconding debtors"—"An act to reduce into one the several acts or parts of acts concerning limitation of actions"—"An act to reduce into one the several acts or parts of acts concerning sheriffs—

* *Precepts in the printed copies.*

V. YEAR OF THE COMMONWEALTH.

509

"An act to reduce into one the several acts or parts of acts concerning executions, and for the relief of insolvent debtors"—"An act to reduce into one the several acts or parts of acts regulating conveyances"—"An act directing the method of suing out and prosecuting writs of *habeas corpus*"—"An act to prevent frauds and perjuries"—"An act concerning partitions, joint-rights and obligations"—"An act concerning the dower and jointure of widows;" and, "for the relief of creditors against fraudulent devises," shall commence and be in force from and after the first day of January, 1797. So much of every act or acts as comes within the purview of the said before recited acts, shall be and the same is hereby repealed from and after the said first day of January, 1797.

1796.

Repealing clause.

CHAPTER CCLXVII.

An ACT concerning the assignment of Bonds and other Writings.

Approved December 19, 1796.

This act was repealed by an act passed at the January session, 1798, (Vol. II. chap. 44.)

SECTION 1. *BE it enacted by the general assembly,* That all bonds, bills, notes of hand, and promissory notes, and all other writings whatsoever, shall be assignable in the same manner as bonds and other writings for money or tobacco are by law assignable, and the assignee or assignees of any of the said writings may bring suit in his, her, or their own name or names in the same manner that the assignees of any bond for money or tobacco now may.

All writings made assignable

Assignees may bring suit in their own names.

SEC. 2. *And be it further enacted,* That nothing herein contained shall be so construed as to alter the species of action accruing on any of the said writings, or change the nature of the defence either in law or equity, that any defendant or defendants may have against an assignee or assignees, or the original assignor or assignors; but the same remedy shall be preserved as if this act had not been made, except that the suit may be brought in the name of the assignee of any writing; and, except also, that actions of covenant may be brought on writings not under seal.

Not affect the species of action or defence.

Covenant may be brought on a writing without seal.

This act shall commence and be in force from and after the passage thereof.

Commencement.

1796.

CHAPTER CCLXVIII.

An ACT concerning Partitions, Joint-Rights and Obligations.

Approved December 19, 1796.

Copied from an act of 1786.

Joint estates &
estates in com-
mon.How to make
partition there-
of,*Jus accrescendi*
abolished.How suits may
be brought on
a joint obliga-
tion.

SECTION 1. *BE it enacted by the general assembly,* That all joint-tenants or tenants in common, who now are, or hereafter shall be of any estate of inheritance in their own rights, or in the right of their wives; and all joint-tenants or tenants in common, who now hold, or hereafter shall hold, jointly or in common for term of life or years, with others who have or shall have estates of inheritance, or freehold, in any lands, tenements or hereditaments, may be compelled to make partition between them of such lands, tenements and hereditaments as they now hold, or hereafter shall hold as joint-tenants or tenants in common, by writs *de partione faciende*, the forms whereof shall be devised in the district courts, and adapted to the cases aforesaid: but no such partitions between joint-tenants or tenants in common who held or shall hold estates for term of life or years, with others holding equal or greater estates, shall be prejudicial to any entitled to the reversions or remainders after the death of the tenants for life, or after the expiration of the years.

SEC. 2. If partitions be not made between joint-tenants, whether they be such as might have been compelled to make partition or not, or of whatever kind the estates or thing holden or possessed be, the parts of those who die first shall not accrue to the survivors, but shall descend or pass by devise, and shall be subject to debts, charges, curtesy or dower, or transmissible to executors or administrators, and be considered to every other intent and purpose in the same manner as if such deceased joint-tenants had been tenants in common.

SEC. 3. The representatives of one jointly bound with another for the payment of debt, or for performance or forbearance of any act, or for any other thing, and dying in the lifetime of the latter, may be charged by virtue of such obligation in the same manner, as such representatives might have been charged, if the obligors had been bound severally as well as jointly.

SEC. 4. Partition may be demanded by one and the

same writ of all the several parcels of land or other real estate to which the parties have title and execution thereupon done by the sheriff and jury* as heretofore, or by special commissioners to be appointed by the court, with the assent of the parties, by allotment to each party of part in each parcel, or of parts in one or more parcels, or of one or more individual parcels, with or without the addition of a part or parts of other parcels, as shall be most for the interest of the parties in general.

1796.

Partition of several parcels to be made by one writ.

SEC. 5. No plea in abatement shall be received in any suit for partition: nor shall it abate by the death of any tenant.

Writs not to abate.

SEC. 6. After a writ of partition returned, affidavit being made by some credible person that due notice of the writ had been given to the tenant or tenants to the action, and that a copy thereof had been left with him, her or them, if he, she or they could be found; or if not, that such notice had been given to, and a copy left with the wife, son or daughter, being of the age of twenty-one years or upwards, and at the usual place of abode of such as could not be found, or the person in actual possession not being the demandant of the lands whereof partition is demanded, twenty days or more before the day of return, if the tenant or tenants shall not cause an appearance to be entered at the time by law appointed, or within one month thereafter, the demandant having filed his or her declaration, the court may proceed to examine his or her title, and the quantity demanded, and shall give judgment by default for so much as he or she shall appear to them to have a right to, and award a writ to make partition, which being executed, after eight days notice given to the persons mentioned before, judgment final shall thereupon be given, which shall be as binding as if it had been given after an appearance; and upon a trial, unless any tenant within one year after the first judgment, or being an infant, a married woman, of unsound mind, or out of Kentucky, within one year after attainment of full age, death of the husband, recovery of understanding, return to the country, respectively by motion to the court, either admitting the demandant's right and purpart, shall shew inequality in the partition; in which case the court may award new partition to be made, and that in presence of all the parties, if they chuse to attend it; and the second partition shall be as binding

Proceedings thereon.

New partitions how to be made

* Juror in the roll,

1796.

How judgments
may be execu-
ted.

as if the tenant had appeared and plead in the first instance, or else shall shew sufficient matter in bar of the partition, or that the demandant hath not title to so much as he or she hath recovered, in which case the court may suspend or set aside the judgment, and admit the tenant to appear and plead, and the cause shall proceed as if no judgment had been given; and if upon the trial thereof the court shall give the same judgment as the first, it shall stand confirmed, and the person or persons in whose behalf the motion was made, shall be awarded to pay costs.

SEC. 7. The under sheriff, when the high sheriff cannot conveniently attend, may, in presence of two justices of the peace, proceed to the execution of a judgment in partition, by inquisition in due form of law; and the high sheriff shall make the same return as if he had acted in person.

Tenants to
whom to be
allotted.

* Reversions in
the roll.
† Parties in
the roll.

‡ Allowed in
the roll.
†† Severally in
the roll.

SEC. 8. They who were tenants of the messuages, lands, tenements and hereditaments, or any part thereof before they were divided, shall hold the same of the land-lords to whom they shall be allotted by the partition in severalty, under the same conditions, rents, covenants and reservations*; and the land-lords shall warrant the several parts† unto the tenants, as they were bound to do by leases or grants respectively: and any demandant who was tenant in actual possession, to the tenant to the action for his purpart of the messuages, lands, tenements and hereditaments, divided by virtue of a writ of partition, or any part thereof, shall hold it for the same term, and under the same conditions and covenants when it shall be allotted‡ in severalty.††

CHAPTER CCLXIX.

An ACT concerning the establishing of Towns.

Approved December 19, 1796.

Amended by an act passed in 1797, (Chap. 294) — At the January session, 1798, an act was passed for the better regulation of towns, (Vol. II. chap. 37,) — Another in 1800, (Vol. II, chap. 296,) and another in 1801, (Vol. II. chap. 367.)

SECTION 1. *BE it enacted by the general assembly,*
County courts authorized to establish towns. That the county courts in this commonwealth, shall be, and the same are hereby vested with full power and authority, in all cases within the bounds of their counties, where they may seem necessary and advantageous for

the same and the public at large, by an order of court, to establish a town, and vest any particular tract or parcel of land in trustees for that purpose, on the application of the proprietor of the land; and the court shall in such order ascertain by metes and bounds the quantities of land that they may deem necessary for such town, appoint the trustees, and fix the name by which it may be called; which order of court shall as effectually vest the land so allotted for a town in such trustees as if done by an act of the legislature: *Provided*, however, that no application shall be made to any county court for an order as aforesaid, unless notice of such application shall have been given to the public by advertisement at the door of the court-house of the county in which the land shall lie, for at least two months, and twice a month for three months successively in the Kentucky Gazette, or Herald, previous thereto; and provided also, that no town shall be established on any land under this act, or any land laid off in addition to any town already established, to which any person or persons sets up a claim either in law or equity, without the consent of the adverse claimant or claimants. The land vested in trustees as aforesaid, shall be by them, or a majority of them, laid off into convenient streets and lots; and the lots shall be disposed of by them at public auction, for the best price that can be had either in money or property, and giving such credit as the proprietor of said town may direct, having previously advertised such sale at the door of the court-house two months. The said trustees shall take bond with security or securities to be approved of by the proprietor, for the payment of the purchase money to the proprietor, and deliver such bond to him. The said trustees shall convey the lots in fee simple to the purchaser; and shall moreover have full power and authority to make such rules and regulations for the government of the said town as shall appear necessary, provided they are not contrary to the constitution and laws of this state; and shall settle and determine the bounds of all lots in said town, and fill any vacancy that may happen by death, resignation, refusal to act, or removal out of the county of any of the trustees so appointed or elected as hereafter directed.

SEC. 2. And the trustees of any town established by this act, are hereby empowered to cause the streets of the

1796.

Appoint trustees.
Fix the name.

Provide:

Further provide

Duty of the trustees.

Power of the trustees.

1796.

said town to be cleaned and repaired by the inhabitants thereof; and if they or any of them shall refuse to clean or repair the part of said streets assigned them, it shall be lawful for the said trustees, or a majority of them, to hire the cleaning and repairing of said streets, and levy the price thereof on the person or persons so failing and refusing; and in case they do not make payment immediately, the said trustees are hereby authorized and empowered to recover the same before any justice of the peace of the county, with costs; and each justice shall grant execution accordingly.

Trustees may
be elected, how
and when.

SEC. 3. When the holders of lots in any town established agreeably to this act, and actually residing therein, shall amount to fifteen, they shall elect trustees of the said town on the court day in the month of August in every second year; and the trustees so appointed shall have the same powers as those appointed by the court.

Person applying
for a town to
give bond.

SEC. 4. When any person shall apply to the court of any county to have a town established under this act, it shall be the duty of such court, and they are hereby directed to take bond with sufficient security, in the penalty of one thousand pounds, payable to the justices of said court, or their successors, from the person applying, conditioned, that if any person shall hereafter establish a better title either in law or equity to the land, or any part thereof on which such town is erected, that he shall pay and account to such person establishing the better title for all sums of money for which the lots or the part of them included within the bounds of such better title, were sold by the trustees; which bond may be put in suit by and at the expence of any person establishing a better title to the whole or any part of such land, from time to time, until the whole of the money for which any lots included in the bounds of any such better title have been sold, shall be recovered.

How additions
may be made to
towns.

SEC. 5. Where any town has been established in this commonwealth, and the proprietor of the land adjoining the same shall wish to add to, or enlarge such town, and having advertised the same agreeably to the directions of this act, the court of the county in which the same is situate, on his application, are hereby authorized (if they deem it necessary) to add any particular tract or parcel of land to such town, or by order of court vest in the trustees the same, taking bond with approved security from

the proprietor, as in other cases; and the said trustees shall proceed to lay off the land into lots and streets, and dispose of the same agreeably to the directions of this act; and where any town has heretofore been established, and not vested in trustees, or where the same has been vested, and the trustees, or a majority of them are dead or removed, it shall be the duty of the county court of the county in which such town may be, on application of the proprietor, or without, if to them it appear necessary, to appoint trustees for such town or towns; and the lands appropriated by law shall be vested in the trustees so appointed; and such trustees shall have full power and authority to convey lots in like manner, and possess the same powers as are given to other trustees by this act; and when lots have been sold and not conveyed, the said trustees are hereby authorized and empowered to convey the same.

SEC. 6. The clerks of courts shall be entitled to the same fees, to be paid and collected in like manner for the duties enjoined them by this act, as for services of a similar nature. And whereas the lots in towns heretofore established by law, are subject to forfeiture if not built upon in a certain limited time, and application is frequently made to this legislature to prolong the same:

Wherefore, SEC. 7. *Be it enacted*, That the forfeiture of no lots in any of the towns aforesaid, shall accrue for want of erecting the necessary buildings thereon within five years from the passage of this act, nor at any time thereafter: *Provided*, a majority of the justices of the county court of the county in which any town is situate, shall think proper to give longer time to improve the said lots; and the justices of the county courts of each county, or a majority of them, are hereby authorized and empowered, on application of any person, to grant indulgence for improving lots in any town within their respective counties, from time to time as to them may appear just and right; and no lot shall be forfeited where such indulgence is granted by the court, any law to the contrary notwithstanding.

1796.

Court to appoint trustees in certain cases.

Clerk's fees for services what.

Recital.

Further time to improve lots in towns heretofore established.

1796.

CHAPTER CCLXX.

An ACT suspending the sale of Lands, and for other purposes.

Approved December 19, 1796.

Connected with the subject of revenue, see chap. 10.

Sales of lands
suspended.

SECTION 1. *BE it enacted by the general assembly,* That the sheriffs of this commonwealth shall sell no more lands for the payment of the taxes until directed by an act of the legislature.

Certain acts
how to be con-
strued.

SEC. 2. Nothing contained in the following acts, to wit: the act entitled "an act to reduce into one the several acts concerning sheriffs," and the act entitled "an act to reduce into one act the several acts establishing courts of quarter sessions, and directing the proceedings therein," shall be so construed as to contravene any of the provisions contained in the act entitled "an act concerning the examination and trial of criminals, grand and petit juries, venires, and for other purposes."

Commence-
ment.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXI.

An ACT for the appropriation of Money.

Approved December 19, 1796.

Had its effect.

CHAPTER CCLXXII.

An ACT concerning the Dower and Jointure of Widows.

Approved, December 19, 1796.

This is an imperfect mutilated transcript of the Virginia law of dower. See acts of 1705, chap. 7, sections 8 and 9.

"VIII. *And be it further enacted,* That the widow of any person dying intestate shall be endowed of one full and equal third part of all her deceased husband's lands, tenements and other real estate, in manner as is directed and prescribed by the laws and constitution of the kingdom of England; and till such dower shall be assigned it shall be lawful for her to remain and continue in the mansion-house, and the messuage or plantation thereto belonging, without being chargeable to pay the heir any rent for the same, any law, custom, or usage to the contrary, in any wise notwithstanding.

IX. *Provided always,* That if any widow shall have such a jointure settled on her, in the lifetime of her husband, as by law doth bar her of her dower, she shall not hold possession of any houses or messuages of her said deceased husband other than what shall be so settled on her."

See also acts of January session, 1798, chap. 53—and chap. 278 of this volume, where the remaining provisions of the Virginia acts are introduced.

SECTION 1. *BE it enacted by the general assembly,* That a widow, after the death of her husband, shall tarry in the mansion-house of her husband, and the plantation thereto belonging rent free, until her dower shall be assigned her; and if she be thereof in the mean time deforced, she shall have a *vicontiel* writ in the nature of a writ *de quarentina habenda* directed to the sheriff, whereupon such proceedings and speed shall be used as hath or might have been used on the said writ of *quarentina*.

1796

Widow may remain in the mansion house until dower is assigned to her.

SEC. 2. Whosoever shall deforce widows of their dowers of the lands whereof their husbands died seized, or of such mansion-house or plantation, if the same widows shall after recover by plea they that be convicted of such wrongful deforcement, shall yield damages to the same widow, that is to say, the value of the whole dower to them belonging from the time of the death of their husbands, unto the day that the said widows by judgment have recovered *seisin* of their dower in a writ of dower, called *unde nihil habet*: the writ shall not abate by the exception of the tenants, because the demandant hath recovered her dower of another man by her writ purchased, unless he can shew that the dower so received was in satisfaction of her right of dower in the lands whereof she demands dower.

May have an action against those who deforce her of her dower wrongfully.

SEC. 3. In case where the husband being impleaded for land by default, the woman, after his death demanding her dower shall be heard, and if it be alledged against her that her husband lost the land whereof the dower is demanded by judgment, whereby she ought not to have dower, and then it be enquired by what judgments; and if it be found that it was by fault whereupon the tenant must answer, then it behoveth the tenant to answer further, and to shew that he had right, and hath in the aforesaid lands according to the form of the writ, that the tenant before purchased against the husband; and if he can shew that the husband of such wife had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the wife shall recover nothing of her dower, which thing if he cannot shew the wife shall recover her dower.

May demand dower of lands recovered in an action where judgment was obtained by default.

SEC. 4. And whereas some time it chanceth that a woman not having a right to demand dower, the heir being within age, doth purchase a writ of dower against a guardian, and the guardian endoweth the woman by fa-

Where a widow is endowed by collusion, the heir may contest and how.

1796

vor, or maketh a default, or by collusion defendeth the plea so faintly, whereby the woman is awarded her dower in prejudice of the heir, it is provided, that the heir, when he cometh to full age, shall have an action to demand the *scisin* of his ancestor against such a woman, like as he should have against any other deforcer; yet so that the woman shall have her exception saved against the demandant, to shew that she had right to her dower, which if she can shew she shall go quit, and retain her dower; and if not, the heir shall recover his demand. In like manner, the woman shall be aided if the heir or any other do implead her for her dower. If she lose her dower by a default, in which case the default shall not be so prejudicial to her, but that she shall recover her dower if she hath right thereto, and she shall have this writ, "Command A. that justly, &c. he render to B. who was the wife of F. so much land, with the appurtenances in C. which she claims to be her reasonable dower (or of her reasonable dower) and that the aforesaid A. deforceth her, &c." and to this writ the tenant shall have his exception to shew that she had no right to be endowed, which, if he can verify, he shall go quit, if not, the woman shall recover the land, whereof she was endowed before. Also, widows may bequeath the crop growing on dower lands.

The default of widows not to bar them of dower.

The form of a writ of dower.

What a tenant may plead thereto.

Widows may bequeath the crop growing on dower lands.

Wife living with adulterer to be barred of dower.

Jointure a bar to dower.

SEC. 5. But if a wife willingly leave her husband, and go away and continue with her adulterer, she shall be barred for ever of her action to demand her dower that she ought to have of her husband's lands, if she be convicted thereupon; except that her husband, willingly and without coercion, reconcile her and suffer her to dwell with him; in which case she shall be restored to her action.

SEC. 6. Also, if any estate be conveyed by deed or will, either expressly or by averment for the jointure of the wife in lieu of her dower, to take effect in her own possession immediately on the death of her husband, and to continue during her life at least determinable by such acts only as could forfeit her dower at the common law; such conveyance shall bar her dower of the residue of the lands, tenements and hereditaments, which at any time were her said husband's: but if the said conveyance were made before the marriage, and during the infancy

of the *feme* (or if it were made after marriage) in either case the widow may, at her election, waive such jointure and demand her dower.

1796.

SEC. 7. When any conveyance intended to be in lieu of dower, shall, through any defect, fail to be a legal bar thereto, and the widow availing herself of such defect, shall demand her dower, the estate and interest conveyed to such widow with intention to bar her dower, shall thereupon cease and determine.

Dower claimed when estate had been conveyed as jointure, the estate shall cease

SEC. 8. If a widow be lawfully expelled or evicted from her jointure, or any part thereof, without any fraud or covin, by law, entry or action, she shall be endowed of as much of the residue of her husband's lands, tenements or hereditaments, whereof she was before dowerable, as the same lands, tenements or hereditaments, so evicted and expelled, shall amount or extend unto.

Widows evicted of their jointure may demand dower.

CHAPTER CCLXXIII.

An ACT to reduce into one the several acts directing the rules and proceedings in the courts of Chancery.

Approved, December 19, 1796.

This act was amended by an act of November session, 1798, (Vol. II. Chap. 151)—by one passed in 1799, (Vol. II. Chap. 201)—and by two passed in 1800, (Vol. II. Chaps. 294 & 295.)—See also acts of 1807, (Vol. III. Chap. 500.

All the provisions contained in this act are copied from acts of Kentucky and Virginia in force when it passed.—But the repealing clause leaves such parts of antecedent acts as do not conflict with it, to be considered as in force.

Anterior to the revolution, the old general court of Virginia had a chancery jurisdiction as extensive as its common law jurisdiction. That ordinance which they call their constitution, seems to have contemplated a separation of the jurisdictions. At the October term of 1777, the legislature passed an act for establishing the high court of chancery; the provisions of which are very minute, and frequent allusion is made to the practice of the general court as a court of chancery—and it contains no repealing clause of any kind.

By 26th section, "All matters of fact, material to the determination of the cause, which in the course of the proceedings shall be affirmed by the one party and denied by the other, shall be tried by a jury upon evidence given *in voce* in the said court; and where witnesses are absent through sickness, or other unavoidable cause, upon their depositions taken as the law directs, for which purpose an issue or issues shall be made up by declaration and plea, as hath been heretofore used in chancery, when issues have been specially directed to be made up and tried by jury; for trial of which issues, the sheriff of the county in which the court shall sit, shall, every day of its session, summon a sufficient number of jurymen of the bye-standers, or others found within half a mile of the court house, who shall be qualified as jurors attending the general court, and shall be subject to the same penalties for failing to attend; saving to the defendant the same benefit of evidence, by his own answer, as hath been heretofore allowed in trials before the court of chancery."

The reader will observe that a general court of extensive common law jurif-

1796.

diction was established at this same session, which directs that juries shall be summoned from the by-standers qualified as the law directs, but without the supplemental provision "or others found within half a mile of the court house." Another provision contained in this act deserves to be noticed, it is the 38th section:

"XXXVIII. If any defendant or defendants shall be in custody upon any process of contempt, and be brought into court by virtue of a writ of *habeas corpus*, or other process, and shall refuse or neglect to enter his or her appearance according to the rules of the court, or appoint an attorney of the court to do the same for him, the court in such case may direct an attorney to enter an appearance for the defendant or defendants, and thereupon such proceedings may be had as if he or they had actually entered an appearance; but if such defendant or defendants shall be in custody at the time a decree shall be made upon refusal or neglect to enter an appearance or to appoint an attorney as aforesaid, or shall be forthcoming to as to be served with a copy of the decree, then such defendant or defendants shall be served with such copy before any process shall be taken out to compel the performance thereof, and if such defendant or defendants shall die in custody before such service, then his heir, if any real estate be sequestered or affected by such decree, or if only personal estate his executor or administrator shall be served with a copy in a reasonable time after such death shall be known to the plaintiff, and who is such heir, executor or administrator."

It may likewise be remarked that wherever months are mentioned, they are "calender months," and that the day for the defendant's appearance is declared "In all cases to be the second day after the term to which the subpoena is returnable." By a subsequent act of the same session, the high court of chancery was empowered from time to time to appoint their own *serjeant at arms*, Chap. 27. At the October session, 1783, the law directing facts to be tried by jury-waive, repealed by section 3d, chap. 26:

"III. And whereas the mode of trial in order to ascertain all material facts affirmed by the one party and denied by the other, in the suits depending, or that may hereafter be commenced, in the high court of chancery by jury upon *viva voce* testimony in the said court, hath been found to be expensive to the parties, and inconvenient to witnesses *Be it therefore enacted*, That so much of the twenty-sixth rule prescribed by the act for establishing an high court of chancery, as directs such matters of fact to be tried by jury in the said court, upon *viva voce* testimony, shall be, and the same is hereby repealed; and henceforward the mode of trial in all causes now depending before the high court of chancery, as well as in such as may hereafter be commenced, shall be the same as heretofore used and practised in the courts of chancery within the colony of Virginia under the former government."

In 1787 an act was passed to amend an act for establishing a high court of chancery, (Chap. 9, session acts.) This act among many other provisions which have either been re-enacted in Kentucky or otherwise superseded, has the following, which are worthy of notice. After introducing the same provisions respecting executions on final decrees in chancery which are contained in the second section of our execution law of 1796, (Chap. 274) it provides, That "an execution may be taken out in all cases where costs are recovered in manner above mentioned."

The provision contained in the eleventh section of this act was introduced into the act of 1787, and was followed by a declaration that "no discontinuance shall take place in any cause from the non-attendance of a sufficient number of judges to constitute a court, or for the want of a continuing order in any case." The act concludes by declaring that "the rules and regulations in this act contained shall be observed in the county courts, so far as they apply"—Most of them were however adopted expressly by the county court act of the same session.

In 1788, an amendatory act was passed containing the following important provision: Sec. 5. "It shall be lawful for the high court of chancery in such

V. YEAR OF THE COMMONWEALTH.

521

cases as may require a report which cannot be performed by the court without great delay to other business, to employ one or more commissioners, and to cause a reasonable allowance to be taxed in the bill of costs"—session acts of 1788, Chap. 69. This is the only part of the act which can be interesting to a Kentucky lawyer. In 1789, this act underwent some modification, by chap. 35 of the session acts:

"An act prescribing the mode of collecting the allowance to the commissioner of the high court of chancery."

"Whereas it hath been found by experience, that the appointment of a commissioner in the high court of chancery hath greatly contributed to the dispatch of business and the accuracy of reports, and it is expedient that the allowance made for his services in each cause, should be collected in a manner different from what is prescribed by the act, entitled "an act for amending the several acts of the general assembly concerning the high court of chancery:

"Be it enacted by the general assembly, That the commissioner may issue his tickets for the sums allowed by the high court of chancery, for services performed by him under the orders of the said court, and deliver them to the respective sheriffs, at the same time the clerk of the said court is directed by law to deliver his tickets, and that the several sheriffs shall collect and account for them in the same manner and under the like penalties, and shall have the same allowance for collecting and for insolvencies as are prescribed in the case of the clerk of the said high court of chancery."

In 1790, a little act was passed introducing the substance of the provision respecting attachments, as contained in the 6th section of this act, (session acts of 1790.)

The reader may learn from the prelection to chap. 264, how the several acts above referred to obtain authority in Kentucky.

SECTION 1. WHENEVER a subpoena in chancery is returned executed, the complainant shall, within three months thereafter, file his bill; and if he fail so to do within that period, the suit shall stand *ipso facto* dismissed with costs.

SEC. 2. And on the complainant's dismissing his bill, or the defendant dismissing the same for want of prosecution, the complainant shall pay costs, to be taxed by the clerk of the court; for which costs an attachment or other process of contempt may issue returnable on any return day.

SEC. 3. The complainant may insert in his bill as many defendants as he pleases, though they claim under different titles; but if any of the defendants disclaim, he shall pay them their costs, except for special reasons appearing, the court shall otherwise decree, and he shall also pay to each defendant any costs he may incur in consequence of any contest and claim in which he is not interested.

SEC. 4. The complainant may amend his bill before the defendant or his attorney has taken out a copy thereof, or in a small matter afterwards, without paying costs: but, if he amend in a material part after such copy ob-

1796.

If the complainant fails to file his bill, suit to be dismissed.

And complainant to pay costs and how they are to be recovered.

Complainant may unite different defendants in the same suit.

May amend bill in certain cases without costs, and in what cases not.

1796.

Where an attachment may issue.

When a bill may be taken *pro confesso*.

Defendant to file his answer within three months.

Or bill may be taken *pro con*.

Or the matter decreed, or a general commission issue.

Provido.

No process of contempt to issue until subpoena is issued. Before whom a defendant may swear to his answer.

A defendant may call on complainant to answer interrogatories.

May also bring a new party before the court.

tained, he shall pay the defendant all costs occasioned thereby.

SEC. 5. If the defendant shall not appear on the day of appearance, an attachment shall be awarded and issued against him returnable to the next term; which being returned executed, if the defendant doth not appear, or being brought into court upon any such process, shall obstinately refuse to answer, the complainant's bill shall be taken as confessed, and the matter thereof decreed accordingly.

SEC. 6. If the defendant does not file his answer within three months after the complainant shall have filed his bill, having been also served with a *subpoena*, the complainant may issue an attachment against the defendant; and upon its being returned executed, or a copy left at the defendant's place of residence, if he does not appear, or obstinately* refuse to answer, the complainant may proceed to take his bill *pro confesso*, and the court shall decree the matter thereof; or he may have a general commission to take depositions; or he may move the court to bring in the defendant to answer interrogatories at his election, and proceed on to trial in the two last cases as if the answer had been filed and the cause was at issue: *Provided*, that the court, for good cause shewn, may allow the answer to be filed, and grant a further day for such hearing; and if the attachment be returned not executed, an attachment with proclamation, shall be issued, and if upon the return thereof no answer shall be put in, the complainant's bill shall be taken *pro confesso*, and the matter thereof decreed.

SEC. 7. No process of contempt shall be issued before the *subpoena* be returned, served by a sworn officer, or affidavit be made of the service thereof.

SEC. 8. Every defendant may swear to his answer before any judge or justice of the peace.

SEC. 9. A defendant may introduce any new matter material for his defence in his answer, and call on the complainant, (if he judges it necessary so to do) to answer the same on oath, which the complainant shall do within the same time, under the same rules and regulations as a defendant is now compelled to answer the bill of the complainant.

SEC. 10. Where it is necessary for the defendant to bring a new party before the court, he shall state it in his

* *Absolutely* in the roll.

† *Unless* in the roll.

answer, and insert interrogatories for him to answer; and thereupon a *subpoena* shall be sent out and other proceeding be had as in cases of other defendants.

SEC. 11. After answer filed and no plea in abatement to the jurisdiction of the court, no exception for want of jurisdiction shall ever afterwards be made, nor shall the court ever thereafter delay or refuse justice, or reverse the proceedings for want of jurisdiction, except in cases of controversy respecting land lying without the jurisdiction of such courts, and also of infants and *feme coverts*.

SEC. 12. When a cross bill shall be exhibited the defendant or defendants to the first bill shall answer thereto, before the defendant or defendants to the cross bill shall be compelled to answer such cross bill.

SEC. 13. The complainant shall reply or file exceptions within two calendar months after the answer shall have been put in: if he fails so to do, the defendant may give a rule to reply with the clerk of the court; which being expired, and no replication or exceptions filed, the suit shall be dismissed with costs; but the court may order the same to be retained if they see cause, on payment of costs.

SEC. 14. If the complainant's attorney shall except against any answer as insufficient, he may file his exceptions, and give a rule with the clerk to make a better answer within two calendar months; and if within that time the defendant shall put in a sufficient answer, the same shall be received without costs; but if any defendant insists on the sufficiency of his answer, or neglects or refuses to put in a sufficient answer, or shall put in another insufficient answer, the plaintiff may set down his exceptions to be argued the next term in court, and after the expiration of such rule or any second insufficient answer put in, no further or other answer shall be received but upon payment of costs.

SEC. 15. If upon argument the complainant's exceptions shall be over-ruled, or the defendant's answer judged insufficient, the complainant shall pay to the defendant, or the defendant to the complainant, such costs as shall be allowed by the court.

SEC. 16. Upon a second answer adjudged insufficient, costs shall be doubled.

SEC. 17. If a defendant shall put in a third insufficient answer, which shall be so adjudged, he or she may be ex-

1796.

fore the court, and proceedings in that case. After answer no plea in abatement allowed as to jurisdiction.

Cross-bill not to be answered till answer is filed to the original bill.

Complainant may reply or except to answer.

Proceedings where exceptions are taken to an answer.

Exceptions not good complainant to pay costs & vice versa.

A third insufficient answer, defendant to be interrogated.

1796.

amined upon interrogatories, and committed, until he or she shall answer them and pay the costs.

SEC. 18. If the defendant, after process of contempt, put in an insufficient answer which shall be so adjudged, the complainant may go on with the subsequent process of contempt, as if no answer had been put in.

Rules to be taken in the clerk's office.

SEC. 19. Rules to plead, answer, reply, rejoin or other proceedings not before particularly mentioned, when necessary, shall be given from month to month with the clerk in his office, and shall be entered in a rule-book for the information of all parties, attornies or solicitors, concerned therein.

Rejoinder when to be filed,

SEC. 20. No defendant shall be admitted to put in a rejoinder, unless it be filed on or before the expiration of the rule to rejoin; but the complainant may proceed to set his cause down for hearing.

When a plea or demurrer.

SEC. 21. After an attachment with proclamation, returned, no plea or demurrer shall be received unless by an order of court upon motion.

Proceedings thereon.

SEC. 22. If the complainant conceives any plea or demurrer to be nought (either for the matter or manner of it) he may set it down with the clerk to be argued; or if he thinks the plea good (but not true) he may take issue upon it, and proceed to trial by jury, as hath heretofore been used in other cases in chancery, where trial hath been by jury: and if thereupon the plea shall be found false, the complainant shall have the same advantage as if it had been so found by verdict at common law.

Plea or demurrer over ruled, no other to be received.

SEC. 23. If a plea or demurrer be over-ruled, no other plea or demurrer shall be thereafter received, but the defendant shall answer the allegations* of the bill.

Bill may be dismissed for want of replication.

SEC. 24. If the complainant shall not proceed to reply, or to set for hearing as before mentioned, any plea or demurrer, before the second court, (after filing the same) the bill may be dismissed of course with costs.

Costs allowed on over-ruling plea or demurrer.

SEC. 25. Upon a plea or demurrer argued and over-ruled, costs shall be paid as where an answer is judged insufficient; and the defendant shall answer within two calendar months after; but if adjudged good the defendant shall have his costs.

Bills to perpetuate testimony proceedings thereon.

SEC. 26. Bills to perpetuate testimony, may be brought against any number of persons (though they claim under different rights) subject to the rules above mentioned as to costs; and the complainant, on the coming in of the

* Obligations in the roll.

answer, may have a commission, and proceed to take the depositions of his witnesses, on giving the defendant reasonable notice of the time and place of doing the same.

1796

SEC. 27. Any person having a claim to land within this state, may file a bill to perpetuate his testimony concerning such claim; and on his making affidavit that he verily believes his claim depends on the testimony of living witnesses, and that he does not know who sets up any claim to the said land, or any part thereof; or that he does not know of any other person or persons who have such claim, except those who are made defendants to the said suit, may as to those he does not know, have an order to advertise the time and place of taking the depositions of such witnesses, which being inserted in the Kentucky Gazette or Kentucky Herald, six times, he may proceed to take depositions of such witnesses; which depositions so taken may thereafter be used against any person setting up a claim to any part of the said land, provided that there be at least four months between the first advertisement and taking such deposition: *Provided* also, that the present name of the county in which the land lies, and the present names of the water courses whereon it is situated; and an exact copy of the certificate or entry, or both, (as the case may be) under which the same is claimed, be inserted in the advertisement: and provided also, that there be returned with the depositions the Gazettes in which such advertisement were inserted; or a copy of such advertisement with an affidavit from the printer that it had been published as is above directed.

Where a claim depends on living witnesses, and adverse claimants are not known.

SEC. 28. In all cases of bills to perpetuate testimony, if the defendants or any of them do not appear within three months after the *subpoena* has been returned executed, and the bill filed, and put in their answer, it shall be lawful for the complainant at any time afterwards, on giving their attorney at law reasonable notice of the time and place of taking the depositions; and where they have no such attorney, on his filing such notice in the clerk's office, twenty days before the taking such depositions, in the same manner that he might have done if the defendants had put in their answers, and had given them personal notice of the time and place of taking such depositions.

Where defendants do not appear, notice to the attorney sufficient.

Where there is no attorney, filing in the office.

SEC. 29. Any person having both the legal title to,

1796.

Persons having
the legal right
and possession,
may bring suit
to establish their
claim.

and possession of land, may institute a suit against any other person setting up a claim thereto: and if the complainant shall be able to establish his title to such land, the defendant shall be decreed to release his claim thereto, and to pay the complainant his costs, unless the defendant shall by his answer disclaim all title to such lands, and offer to give such release to the complainant; in which case the complainant shall pay to the defendant his costs; except for special reasons appearing the court should otherwise decree.

Where answers
may be given
in evidence to a
jury.

SEC. 30. Where either party has been called on for a discovery on oath, and the fact as to which the discovery was prayed is afterward submitted to a jury, the answer put in as to such fact shall be laid before the jury in the same manner as is practised with regard to answers on an issue directed to be tried at law, by a court of chancery.

Party taking
depositions to
give notice
thereof.

SEC. 31. In all cases of taking depositions (except where it is [hereby:] otherwise particularly directed) the party taking the same shall give to the opposite party reasonable notice of the time and place of taking such depositions (unless such party reside out of the state) in which case notice shall be given to his attorney in fact: *Provided* notice be given to such party, or filed in the clerk's office of the court in which the suit is depending, of the appointment of such attorney in fact; and where no such notice shall be given or filed, then notice of the time and place of taking such depositions given to his attorney at law shall be sufficient; but no notice shall be necessary to any defendant, except such as it is intended to use the depositions as evidence against.

Defendant re-
fusing to an-
swer after de-
murrer overru-
led, bill to be
taken pro. con.

SEC. 32. If any defendant, after a demurrer, shall have been over-ruled shall refuse to answer, the bill shall be taken as confessed, and the matter thereof decreed.

How depofi-
tions *de bene esse*
may be taken.

SEC. 33. After any bill filed, and before the defendant hath answered, upon oath made that any of the complainant's witnesses are aged or infirm, or going out of the commonwealth, the clerk may issue a commission for taking the examination of such witnesses *de bene esse*, the party praying such commission giving reasonable notice to the adverse party of the time and place of taking the depositions.

SEC. 34. Where a general commission shall issue for taking the depositions upon answer and replication, five

† The word "hereby" is not in the printed copies.

months from the time of the replication shall be allowed the parties for taking their depositions, and either party may, at the expiration of six months, set the same for hearing: nor shall any deposition taken after that time be read as evidence on the hearing, except the same was taken by consent of the parties, by special order of the court, or out of the state.

1796.

After replication & commission what time allowed for taking depositions

SEC. 35. Writs of *ne exeat* shall not be granted, but upon a bill filed and affidavit made to the truth of the allegations; which being produced to the court in term time, or two judges or justices in vacation, they may grant or refuse such writ, as to them shall seem just; and if granted, they shall direct to be endorsed thereon in what penalty bond and security shall be required of the defendant.

Writs of *ne exeat* how to be granted.

SEC. 36. If the defendant shall by answer, satisfy the court that there is no reason for his restraint or give sufficient security to perform the decree, the writ may be discharged.

How discharged.

SEC. 37. No injunction shall be granted to stay proceedings in any suit at law, unless the matter in dispute be of value sufficient to admit of original jurisdiction in the court to whom application is made for the injunction nor unless the court in term time, or one judge or two justices thereof in vacation, shall be satisfied of the plaintiff's equity, either by affidavit certified at the foot of the bill, that the allegations thereof are true, or by other means, and shall order the same; in which case the complainant shall enter into bond, with sufficient security to be approved of by the said court, judge or justices, for paying all money and tobacco and costs due or to become due to the plaintiff in the action at law; and also all such costs as shall be awarded against him or her in case the injunction shall be dissolved.

Injunctions how granted.

Bond & security to be given.

SEC. 38. Where any injunction shall be granted, the clerk shall endorse on the *subpoena* that the effect thereof is to be suspended until the party who obtained the same shall give bond with sufficient security, in the office of the court in which the judgment to be enjoined shall have been obtained. The party obtaining the injunction shall then enter into bond, with sufficient security, and file the same in the clerk's office of that court in which the proceedings at law were had, and the clerk shall endorse on the *subpoena* that the bond is filed.

Injunctions suspended until bond &c. is given.

In what office to be given.

1796.

SEC. 39. The several courts of chancery may direct an issue to be tried whenever they judge it necessary. The rules and regulations in this act contained shall be observed in all the courts of chancery within this commonwealth.

CHAPTER CCLXXIV.

An ACT to reduce into one the several acts and parts of acts concerning Executions, and for the relief of insolvent Debtors.

Approved December 19, 1796.

See the preface to chap. 61.

On this perplexing and embarrassing part of the law of Kentucky, I fear that little can be offered which will be satisfactory to the reader. The oldest act of assembly which can be considered as directly in force is the act of 1748, chap. 8. By the preamble of this act the legislature seem to disclaim any intention of introducing new principles of substance, but merely to confine themselves to regulating matters of form:

"Whereas by the common law of England, and divers acts of parliament, which are binding upon the subjects of this colony, all persons recovering any debt, damage, or costs, by the judgment of any court of record, may, at their election, prosecute writs of *fiery facias*, *elegit*, and *capias ad satisfaciendum*, within the year for the taking the goods, lands or body, of the person or persons against whom such judgment is obtained: To the end the said several writs issuing out of any of the courts of record within this dominion, and the manner of executing and returning the same, may be uniform, and the mischiefs arising from the incorrect forms and insufficient returns of such writs prevented," &c.

They then proceed to give the forms of the several writs of execution and the sheriff's returns thereon; all which have been transcribed (*mutatis mutandis*) into the present act. As a further evidence of their "reverence for the laws of England," they transcribed the stat. 21, of James I. the substance of which is retained in the ninth section of the present act.

It is an established maxim of the English law that the sheriff is bound to return on the execution the *value of the goods he has seized*, and that he is answerable for that *value*, let the goods sell for what they may—3 *Saunders* 344, 6 *Mod.* 290—and the legislature of 1748, and of 1796, seem to recognize this principle in the form which they have given of a *venditioni exponas*. But by a variety of regulations which have from time to time been introduced, I am inclined to believe that this maxim of the English law has been entirely abrogated. A brief contrast of the execution laws of the two countries will shew the reader my reasons for drawing this conclusion, and at the same time with what caution the English cases on this subject ought to be received as authority.

First—By the law of England an execution though in form and on the face of it returnable, is not so in substance; but it is entirely at the election of the plaintiff whether it shall ever be returned or not. But by the law of Virginia and Kentucky it is substantially a returnable writ.

Secondly—By the law of England seizing the goods vests the property of them (general or special) in the sheriff, and gives him complete authority to sell them, which he may do as well without a *venditioni exponas* as with one. In England a *venditioni exponas* is merely a writ in the nature of a *mandamus* to compel the sheriff to do what he has full authority, and in duty bound to do without such writ. But in Virginia and Kentucky it is doubtful whether the

1796.

sheriff acquires any property by the seizure of the goods, except that presump-
tive property which the actual possession gives, and whether he can sell them
after the return day of the execution. Here it would seem, that a *venditioni
exponas* is not a mere mandatory writ but is the authority under which the the-
riff sells, and is as necessary to give him authority to sell as a *fi. fa.* is to give
him authority to seize the goods of the defendant.

Thirdly—In England the sheriff is entrusted generally to effeetuate a certain
end, to wit, to make the money out of the goods of the defendant, and is vested
with the general means of doing it, viz. by a sale; but these means he may
modify at his discretion. The law imposes on him no etiquette or formality
of proceeding. But in Virginia and Kentucky a special mode of proceeding is
precisely dictated, the sheriff bound to pursue it, and a sale made otherwise than
by law directed, it is presumed would be void.

Upon the whole I think we may reasonably infer that as the legislature of
Kentucky have given the sheriff no control over the means they did not intend
that he should be answerable for the end.

The act of 1743 directed that if the goods taken in execution would not
sell for three-fourths of their value, (in the opinion of the sheriff) they might
be replevied by the debtor, on giving bond and security to pay to the creditor the
debt and costs with lawful interest within three months, and if no such security
was offered, they should be sold on a credit of three months, taking bond with
security and in both cases gave to such bonds the force of judgments, and per-
mitted executions to be awarded on them on motion of the obligee with ten
days notice.

Another section allowed bonds to be given for the forthcoming of property on
the day of sale, but was silent respecting the measures to be taken in case such
bond should not be complied with. The mischievous use which was made of
this omission is explained and the remedy applied by the amendatory act of
1769; several sections of which are necessary to throw light on the present laws.

(An act to amend an act entitled an act declaring the law concerning executions, and
for relief of insolvent debtors.)

"I. Whereas by an act of general assembly made in the twenty-second year of
the reign of his late majesty king George the second, entitled "an act declaring
the law concerning executions, and for relief of insolvent debtors," it was a-
mong other things enacted, that if the owner of goods and chattels taken by
any sheriff or other officer, by virtue of a writ of *fi. fa.*, should give suffi-
cient security to such sheriff or officer, to have the same goods and chattels
forthcoming at the day of sale, it should be lawful for such sheriff or other of-
ficer, to accept the security, and suffer the goods and chattels to remain in the
possession and at the risk of the debtor, until the time aforesaid: but in case
the debtor refused to deliver up the goods and chattels accordingly, no remedy
was therein provided for the creditor or officer, who being therefore obliged to
commence a new suit on such bond, was compellable, on serving another *fi. fa.*
again, to accept security, to have the estate taken forthcoming, and might
be thereby prevented from ever recovering the debt: For remedy herein,

II. Be it enacted by the governor, council and burgesses, of this present general
assembly, and by the authority of the same, that if the owner of any goods or chat-
tels which shall be taken by any sheriff or other officer, by virtue of a writ of
fi. fa., shall tender sufficient security to have the same goods and chattels
forthcoming at the day of sale, it shall be lawful for the sheriff or officer to
take a bond from such debtor and securities, payable to the creditor, reciting
the service of such execution, and the amount of the money or tobacco due
thereon, and with condition to have the goods or chattels forthcoming at the
day of sale, appointed by such sheriff or officer, and shall thereupon suffer the
said goods and chattels to remain in the possession, and at the risk of the debtor
until that time.

III. And be it further enacted, That if the owner of such goods or chattels

1796.

shall fail to deliver up the same, according to the condition of the bond, or pay the money or tobacco mentioned in the execution, such sheriff or officer shall return the bond to the office of the clerk of the court from whence the execution issued, to be there safely kept, and to have the force of a judgment, and thereupon it shall be lawful for the court where such bond shall be lodged, upon motion of the person to whom the same is payable, his executors or administrators, to award execution for the money and tobacco therein mentioned, with interest thereon from the date of the bond, till payment, and costs, provided the obligors, their executors or administrators, or such of them against whom execution is awarded, have ten days previous notice of such motion; and upon such execution, or on any execution awarded on a bond given to replevy an estate taken by a former execution, the sheriff or officer shall not take any security, either to have the goods forthcoming at the day of sale, or for the payment of the money at a future day, according to the further directions of the said recited act, but shall levy the same immediately, and keep in his hands the goods and chattels taken thereupon, until he shall have sold sufficient thereof to raise the money and tobacco mentioned in the execution, or the same be otherwise satisfied; anything in the said recited act to the contrary notwithstanding. And for the better direction of such sheriff or officer, the clerk shall endorse upon every such execution, that no security of any kind is to be taken. And for settling what fees the sheriffs or other officers shall receive for executing writs of *distingas* upon judgments, in actions of detinue, or attachments on decrees in chancery for the payment of money,

IV. *Be it further enacted*, That the sheriff or officer for executing any such writ of *distingas*, or attachment on such decree, shall be entitled to the same fee or commissions upon the amount of the value of the goods and chattels recovered, or money mentioned in such decree, as is by law allowed for serving any other execution.

V. *And be it further enacted by the authority aforesaid*, That every coroner, before he shall be at liberty to serve any writ of execution, shall, in the court of his county enter into bond with good and sufficient security, payable to our lord the king, in the penalty of five hundred pounds, with condition for the true and faithful execution of his office; and if such coroner shall thereafter make return upon any writ of *feri facias* or *venditioni exponas*, that he hath levied the debt, damages and costs, as in such writ is required, or any part thereof, and shall not immediately pay the same to the party to whom it is payable, or his attorney, or shall return upon any writ of *capias ad satisfaciendum*, or attachment for not performing a decree in chancery, for payment of money or tobacco that he hath taken the body of the defendant or defendants, and hath the same ready to satisfy the money and tobacco in the said writ mentioned, and shall actually have received such money or tobacco of the defendant or defendants, or have suffered him, her or them to have escaped, with his consent, and shall not immediately pay such money or tobacco to the party to whom the same is payable or his attorney, that then, or in either of the said cases, it shall be lawful for the court from whence such writ issued, upon the motion of the creditor, to give judgment against such coroner, his executors or administrators, for the amount of the money and tobacco therein mentioned, and costs, and thereon to award execution; provided such coroner, his executors or administrators, have ten days previous notice of such motion; and upon such execution, no security for payment of the money or tobacco therein mentioned at a future day, or to have the goods forthcoming at the day of sale, shall be taken or received; and the clerk shall endorse thereon that no security of any kind is to be taken."

The act of 1748 authorized the clerks of county courts to issue writs of *feri facias* or *capias ad satisfaciendum* where the defendant removed himself or his effects, or resided out of the county to the sheriff of any county "in this dominion." This provision was defective in not including *elegits*; in consequence of which the following act was passed in 1772:

V. YEAR OF THE COMMONWEALTH.

531

(An act to empower the clerks of county courts to issue certain writs of execution into other counties.)

1796.

"I. Whereas the laws concerning executions are defective in not authorising the clerks of county courts to issue all manner of legal and proper writs of execution upon judgments, decrees in chancery, and final orders, duly recorded and obtained in such courts, into other counties, as is done in writs of *capias ad satisfaciendum* and *fieri facias*: Be it therefore enacted by the governor, council and burgesses of this present general assembly, and it is hereby enacted by the authority of the same, That the clerks of the several county courts in this colony, shall be and they are hereby empowered and required, upon the application of any party who hath obtained, or shall obtain, any judgment, decree or final order, in such courts, to issue any legal or proper writ of execution or attachment thereupon, as the case may require; as also to issue attachments against executors, administrators or guardians, who shall fail to account when ordered so to do by such court, directed to the sheriff of the same, or any other county, provided there be fifteen days at least, and not more than ninety days between the teste and return of such writ.

Acts of 1773,
Chan. Rev. page
21.

II. And be it further enacted by the authority aforesaid, That the sheriff to whom such writ shall be directed and delivered, shall duly execute and return the same, or in default therein shall be liable to the like penalties as are by law inflicted, respectively, for the not executing or returning other writs of execution; and upon failing to pay the money by him received upon any such writ, or suffering a voluntary or negligent escape of the debtor, shall be subject to the same remedy and proceedings as are prescribed by the laws now in force for the like defaults in other executions."

During the period of distraction and distress produced by the revolution, several temporary regulations were made, which it is unnecessary to notice.

At the session of 1787 "so much of all and every act and acts of assembly as empowers the sheriff or other officer levying an execution on the goods or other estate of the debtor, to restore such goods or estate so taken to the debtor, on his entering into bond with security to pay the money or tobacco for which execution was levied, and all costs, with lawful interest for the same, to such creditor, within three months, was repealed." These acts here repealed were never restored to Virginia before Kentucky became an independent state; from which the reader will see that our three months replevin laws are completely an independent system, and have no dependence on the three months replevy laws of Virginia.

This act of 1787 introduced a replevin of twelve months, rendered the bonds taken under it assignable, gave them the force of judgments, and gave the assignee remedy without motion or notice first against the obligors and then against the assignors.

The duration of this law was limited in its enactment to three years—At the ensuing session the legislature say that many doubts had arisen concerning its construction, (Acts of 1788, chap. 77,) to remedy which, they enacted that *whenever on a sale under any execution the amount should exceed the principal, interest and costs, the sheriff or coroner should take a separate bond with security from the buyer for the payment of the surplus to the debtor, with legal interest, at the end of twelve months; which bond was to be delivered to the debtor or his representative, or returned to the clerk's office, have the force of a judgment, be assignable, and in all things be proceeded on as in case of bonds given to a creditor.* The time given for the delivery or return of such bond was thirty days from the date, and the fine for failure the same as for failing to return an execution.

In the 5th section the same provision was introduced as is contained in the 18th and 19th sections of the act of 1796, except that in the Virginia law it applies to goods and slaves only. The only remaining provisions necessary to be noticed, are contained in the 7th and 10th sections:

1796

Acts of 1782,
chap. 77.

"Sec. VII. Bonds may still be given for the forthcoming of goods or other property at the day of sale, but if the condition of such bond shall not be complied with, and judgment shall be entered thereupon, the obligors shall be deprived of the benefit of this and the above-recited act.

"Sec. X. Upon actual sale of any property under this or the said recited act, no principal debtor shall become the security."

In 1791 an act was passed to amend and continue the two acts last mentioned; which from its proximity to our own times, and from its having been the first to introduce several important provisions which have since been, in whole or in part, engrafted into our law, it is thought proper to retain.

ACTS OF 1791, CHAP. III. page 4.

"(An act to amend and continue two acts, passed in the year one thousand, seven hundred and eighty eight, directing the mode of proceeding under certain executions.)

"1. Whereas the act of assembly passed on the fourth day of January, in the year one thousand seven hundred and eighty-eight, entitled "an act directing the mode of proceeding under certain executions," and one other act passed on the twenty-ninth day of December, in the year one thousand seven hundred and eighty-eight, entitled, "an act to amend the act directing the mode of proceeding under certain executions," will both expire in the month of January next, and it is judged expedient that the same should be further continued: *Be it therefore enacted*, That the said two above recited acts shall continue and be in force until the first day of January, one thousand seven hundred and ninety-three.

II. *And be it further enacted*, That wheresoever on a sale for cash or tobacco under any execution, the amount of such sale shall exceed the principal, interest and costs, the sheriff or other officer shall pay such excess or surplus to the debtor, his executors, administrators or agent; and if any sheriff or other officer shall fail or refuse to pay such surplus or excess when required, such sheriff or other officer, his or their security or securities, his or their executors or administrators, shall every and each of them be liable to the like penalty and judgment in favor of the said debtor, as is prescribed and directed by law in favor of the plaintiff against the sheriff for not paying the principal, interest, and costs levied on an execution.

III. *And be it further enacted*, That when a sheriff or other officer under any execution shall receive the whole or any part of the money or tobacco for which the said execution issued, and the person against whom such execution may have issued, his executors or administrators shall obtain an injunction to such execution, or for any part of the money or tobacco mentioned therein, before the money or tobacco is received by such sheriff or officer is paid to the plaintiff, his agent or attorney, or his executors or administrators, in every such case, the sheriff or other officer, his executors or administrators, shall repay to the person or persons against whom such execution issued, his or their executors, administrators, or agent, the money or tobacco so received, or such part thereof as may be enjoined; and if any sheriff or other officer, his or their executors or administrators, shall fail or refuse when required, to repay such sum of money or tobacco, so received and enjoined, to the person having a right to demand the same, such sheriff or other officer and their securities, his or their executors and administrators, and every of them shall be liable to the like penalty and judgment in favor of the person, his executors or administrators, by whom the said injunction is obtained, as is directed by law in favor of the plaintiff against the sheriff for not paying money or tobacco levied on an execution.

IV. If any sheriff or other officer shall fail to deliver or return any bond taken for the forthcoming of property, by virtue of the above last recited act, within sixty days after the date thereof, to the office of the clerk of the court whence such execution issued, he shall be liable to the same penalty for every month

of such failure, and to be recovered in the same manner, as is directed by law against a sheriff or coroner failing to return an execution.

V. And whereas doubts have arisen in what manner judgment shall be rendered against any sheriff, coroner, or serjeant of a corporation, who shall fail to return an execution to the office from whence it issued on or before the return day thereof—For a plain declaration of the law, *Be it enacted*, That where any writ of execution or attachment for not performing a decree in chancery shall come into the possession of any sheriff, coroner, or serjeant of a corporation, and he shall fail to return the same to the office from whence it issued, on or before the return day thereof, it shall be lawful for the court, ten days previous notice being given, upon the motion of the party injured, to fine such sheriff, coroner, or serjeant of a corporation, at their discretion, in any sum not exceeding five pounds per month for every hundred pounds contained in the judgment or decree on which the execution or attachment so by him detained was founded, and so in proportion for any greater or lesser sum, counting the aforesaid months from the return day of the execution or attachment to the day of rendering judgment for the said fine.

VI. If the goods taken by any sheriff or other officer, or any part thereof, shall remain in his hands unsold, he shall make return accordingly, and thereupon the clerk of the court from whence the execution issued, shall and may, and he is hereby required, to issue a *venditioni exponas* to such sheriff or other officer directed, whereupon the like proceedings shall be had, as might and ought to have been had on the first execution.

VII. The sheriff or other officer serving an execution, if the property be actually sold or the debt paid, shall in lieu of the commission heretofore given by law, be allowed a commission of five per centum on the first hundred pounds, or ten thousand pounds of tobacco, and two per centum on all sums above that, but where he shall have proceeded to sale and the defendant shall have replevied, such sheriff or collector, shall be allowed only one half of such commissions.

VIII. *And be it further enacted*, That if any obligor or obligors, obligee, or obligees, in any twelve months replevy bond taken on any execution under the said recited acts, or assignee of any such obligee, as the case may be, shall die before such bond shall be fully paid, it shall and may be lawful for the clerk of any court within this commonwealth, upon the application and oath of the executors or administrators of any such obligee or assignee, that the amount of such bond is not discharged, to issue a writ of execution against every such obligor or obligors, his or their executors or administrators, and to endorse thereon that no security is to be taken; any law to the contrary notwithstanding.

IX. This act shall commence and be in force from and after the first day of January, one thousand seven hundred and ninety-two."

It is hoped that the following hints may be of some advantage to the reader: The act of 1787 above referred to, repeals all acts and parts of acts coming within its purview—it says nothing respecting *elegits*, but the words "all executions hereafter issued," &c. in the third section are comprehensive enough to include them, and that they are included seems presumable from another expression in the same section, viz—that the sheriff shall proceed to sell the goods or other estate; but on the other hand, the conclusion of the sixth section affords an argument that *elegits* were not considered by the legislature as coming within the purview of this act.

As for the unwieldy machinery introduced by this law, it is no longer a subject of interest to the Kentucky lawyer—I shall therefore omit it.

At the time of the separation from Virginia, this act, with the amendments above mentioned and such parts of former laws as had not been superseded by them, constituted the execution law of the new state.

This system remained unaltered until the 20th of December following, which was nearly seven months, when the twelve months replevin law of Virgi-

1796.

1796.

nia was superseded by the introduction of a system entirely incompatible with it, and a repeal of all opposing acts, (See chap. 61.)

The provision introduced by this act was in ordinary cases a forthcoming bond of one month, as had been introduced by the act of 1748, amended by the act of 1769, and on all contracts entered into before the first day of February 1793, a three months replevin was given, or on default of security, a sale on three months credit, the same *substantially* and it is believed *literally* as had been introduced by the act of 1748. By the allowance of a replevin for three months in those particular cases a *substantial* continuance of the Virginia system was effected during the first year of the new commonwealth. This act took effect from and after its passage.

But three days before this, the act subjecting lands to the payment of debts was passed, but suspended in its operation until the 10th day of March, 1793. This proposed to effect a radical change in the law of executions; but it was either through inadvertence or design so framed that it was nearly if not quite impossible to effect a sale under it. The attention of the legislature in this act seems to have been drawn to a single point, viz—to render lands liable to debt by writ of *fi. fa.*; no mention is made of *elegit* or any other writ of execution. This act says that every writ of *fi. fa.* shall bind the property of the lands, &c. from the time it shall be delivered to the officer. The other execution law of this session says, That no writ of *fi. fa.* or other writ of execution shall bind the property of the goods, &c. but from the time such writ shall be delivered, &c. The execution law of 1796, now under consideration, says, That no writ of *fi. fa.* or other writ of execution shall bind the property of the goods, lands, tenements, &c. but from the time such writ shall be delivered to the sheriff, &c. Now the reader would naturally conclude that this section means the same that it would if it had read *no writ of fi. fa. or elegit, &c. shall bind, &c.* but in the first section of this act, in the form of an *elegit* there given, the sheriff is directed to deliver a moiety of the lands whereof the defendant was seized at the day of obtaining the judgment or at any time afterwards, and in the form of the return likewise given, he is directed to return expressly that he has done so. What the legislature meant by this, or whether they meant any thing, is submitted to the consideration of the reader.

The general execution law of 1792, had a provision that when a judgment was obtained against several defendants a *capias ad satisfaciendum* might issue against some and a *fi. fa.* or *elegit* vs. the others (section 3); but this was repealed by the execution law of 1793, (Chap. 125.)

Great part of this last mentioned act consists in repetition of what was already the known and acknowledged law of the state; but besides these it contained some things worthy of notice, among which may be mentioned the abrogation of the new principle already mentioned as introduced by the act of 1792, making executions returnable to rule days instead of court days, to which the last act had made them returnable—authorising the discharge of a debtor from a *ca. sa.* on his giving up lands, and providing that the act subjecting lands to the payment of debts should not operate on contracts entered into before its passage.

At the same session an act passed authorising clerks of the quarter session courts to issue executions on the twelve months replevy bonds of Virginia, (Chap. 116.)

In 1794 an act was passed dispensing with notice previous to suing out an execution on a replevy bond with an express provision that it should not extend to forthcoming bonds, and directing executions issued from the county court to be made returnable to the first day of the term.

The third section directed that where lands were given up on a *ca. sa.* the sheriff should proceed to sell, but should not discharge the debtor until the execution was satisfied. It may be further observed on this act that the right to sue out execution on replevy bonds is given to the executors, administrators or assigns of the obligee. Whatever might have been the intention of the le-

gillature in 1748 and 1792, they made no mention of executors, administrators or assigns. The act of 1787, gave the right of suing out execution on a twelve months bond to the creditor or his assignee, but was silent as to his executors or administrators; but a right to sue out execution on such bond was vested in them by the amendatory act of 1791.

It may be further observed, that in all the acts of Virginia, sheriffs, coroners and collectors of public money have been uniformly excluded from all the benefits derivable from the delay obtained either on a forthcoming or replevy bond, in all judgments obtained against them for failing to pay over money officially received, either for individuals or the public; most of the provisions to that effect have been re-enacted in Kentucky, and if any should have been overlooked by our legislature, they are probably in force as laws of Virginia extended to this State.

Attornies likewise receiving money for their clients and failing to pay it over were placed in the same situation by the laws reforming the county courts, passed in 1785 and 1787. In the execution law of 1787, provision was made that nothing contained in it should be construed to extend to any proceedings on distress for rent on any demise, lease or contract whatsoever.

In a motion made in the court of appeals by Marshall *vs.* Wilkinson in May, 1794. The court said that the execution law of 1787 then remained in force as far as it was applicable, and had not been repealed. It occurs that under that law goods or other estate taken in execution were positively required to be advertised on some court day. Whether this requisition has been repealed by implication, is submitted to the consideration of the reader; it is believed that no express repeal will be found.

SECTION 1. *BE it enacted by the general assembly,*
That all persons recovering any debt, damages or costs, by the judgment of any court of record within this commonwealth, may, at their election, prosecute writs of *fieri facias*, *elegit* and *capias ad satisfaciendum* within the year, for taking the goods, lands or body, of the person or persons against whom such judgment is obtained, in manner following: All such writs shall run in the name of the commonwealth, and bear teste by the clerks of the courts respectively, and shall be returnable to any of the rule days of the said courts, so that there be at least thirty, and not more than ninety days between the teste and return of said writ: *Provided*, that executions may issue from the court of appeals, returnable in the same manner directed by the act, entitled, "an act establishing the court of appeals." The forms of the several writs shall be as follows, *mutatis mutandis*, to wit:
A fieri facias in debt—"The commonwealth of Kentucky to the sheriff of _____ county, greeting: We command you that of the estate of A. B. late of your bailiwick, you cause to be made the sum of _____ which C. D. lately in our court hath recovered against him for debt; also the sum of _____ which to the said C. D. in the same court, were adjudged for his damages, as well

1796

How executions may issue on judgments.

By whom to bear teste, and when returnable.

How executions may issue from court of appeals.

The form of a *fieri facias* in debt.

1796. by reason of detaining the said debt as for his costs in that suit expended whereof he is convicted, as appears to us of record, and that you have the said before the judges or justices (as the case may be) of our said court on the day of to render to the said C. D. of the debt and damages aforesaid, and have then there this writ—Witness, &c.” The same in case upon a promise as before unto “for his damages which he has sustained, as well by reason of his not performing a certain promise and assumption to the said C. D. by the said A. B. lately made, as for his costs by him about his suit in this behalf expended. And in trespass as before unto for damages, as well by occasion of a certain trespass by the said A. B. to the said C. D. offered as for his costs aforesaid.” If for the defendant, say for his costs about his defence in a certain action at the suit of the said, &c. in covenant as before unto for damages, &c. by occasion of a breach of a certain covenant between the said A. B. and C. D. lately made’ &c.”

Trespass for defendant. The form of the writ of *elegit*—“The commonwealth &c. greeting: Whereas A. B. at our court, &c. before our judges (or justices) held, hath recovered against C. D. the sum of which to the said plaintiff was adjudged for a certain debt (or damages) as before. And the said A. B. hath chosen to have delivered to him all the goods and chattels of the said C. D. saving only the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your bailiwick, to have and to hold the goods and chattels aforesaid as his own proper goods, and the said moiety as his free-hold, to him and his assigns, until he shall have levied thereof the debt and damages aforesaid: therefore we command you, that you cause to be delivered all the goods and chattels of the said C. D. saving the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your bailiwick, whereof he at the day of obtaining the said judgment was seized, or at any time afterwards by reasonable price and extent, to have and to hold the said goods and chattels to him the said A. B. as his own proper goods and chattels, and the said moiety as his free-hold, to him and his assigns, until he shall have levied thereof the debt and damages aforesaid; and that you certify to our said judges (or justices) under your seal and the seals of those by whose oath you shall make this extent; and

how you execute this writ, the day of 1796
 and have then there this writ.—Witness, &c.” A *capi-* 1796
as ad satisfaciendum, “The commonwealth, &c. greet- Ca. Sa.
 ing : We command you that you take A. B. late of
 if he be found within your bailiwick, and him safely
 keep, so that you have his body before our judges (or
 justices) of our court, &c. the day of
 to satisfy C. D. of the sum of which
 the said A. B. hath recovered against him for debt, also,
 &c. as before.” In case, trespass or covenant as in the
feri facias .” Which said writs so issued shall Forms of re-
 be executed by the sheriff or other officer, to whom the turns.
 same shall be directed, and shall be returned according
 to the respective forms hereafter mentioned, to wit:
 The return of a *feri facias*, “By virtue of this writ to
 me directed, I have caused to be made the within men-
 tioned sum of of the estate of the within named
 A. B. which said sum of before the judges or
 justices within mentioned, at the day and place within
 contained, I have ready as that writ requires,” or “the Where there is
 within named A. B. hath no estate within my bailiwick, no estate.
 whereby I can make the sum within mentioned,” or
 “By virtue, &c. I have caused to be made of the estate
 of the within named A. B. the sum of which I
 have ready to render to the within named C. D. in part Where part is
 of the debt and damages within mentioned; and I do levied.
 further certify, that the said A. B. hath no more estate
 within my bailiwick, whereof at present I can make the
 residue of the said debt and damages as by the said writ
 is required.” Return of writ *elegit*, “Inquisition in-
 dented, taken at in the county aforesaid, on the Return of a
 day of in the year of our Lord writ of elegit.
 before me E. F. sheriff of the county aforesaid, by virtue
 of a writ to me directed, and to this inquisition annexed,
 and by the oath of A. B. C. &c. good and lawful men of
 my bailiwick, who being charged and sworn upon their
 oaths, do say, That A. B. in the said writ to this inqui-
 sition annexed, named the day of caption of this inqui-
 sition, was possessed of the goods and chattels following
 as of his own proper goods, to wit: of the price Appraisement.
 of which I the said sheriff have caused to be
 delivered to the same C. D. to hold to him as his own
 proper goods and chattels in part of satisfaction of his
 debt and damages aforesaid, in the said writ mentioned :

1796.

and further the said jurors upon their oaths, do say, That the said A. B. at the time of rendering the said judgment aforesaid, was seized in his own demesne as of fee of and in (here name the houses and lands) with the appurtenances of the annual value in all the issues beyond reprises of pounds acres of which, or thereabout, are a true and equal moiety of all and singular of the lands, tenements and hereditaments whatsoever, in the county aforesaid, of the said A. B. which said moiety, I, the said sheriff, the day aforesaid, to C. D. in the said writ named at a reasonable extent, have delivered to hold to him and his assigns, according to the form of the act in that case made and provided, until he shall have levied the residue of the debt and damages aforesaid, as the writ aforesaid requires; and further the said jurors upon their oaths do say, That the said A. B. at the time of giving the judgment aforesaid, had not, nor at the day of taking this inquisition, hath any other, or more goods and chattels, lands or tenements in the county aforesaid, to the knowledge of the jurors aforesaid: in testimony whereof as well I the said sheriff, as the jurors aforesaid to this inquisition, have severally put our seals, the day, year and place above mentioned." Return of a *capias ad satisfaciendum*, "By virtue of this writ to me directed, I have taken the within named A. B. whose body before the judges or justices, within named at the day and place within contained, I have ready to satisfy C. D. of the debt and damages within mentioned as within to me is commanded," or "the within named A. B. is not found within my bailiwick."

Of a Ca. Sa.
executed.

Not executed.

How executions may issue on decrees in chancery.

SEC. 2. After obtaining a final decree for lands, slaves or money, or things of a specific nature in any court having chancery jurisdiction, the clerk of such court shall, upon the request of the party obtaining such decree, issue any writ of execution, either a *feri facias*, *capias ad satisfaciendum*, *habere facias*, *possessionem*, or any other judicial process, which may now issue from any court of common law, according to the nature of the case for carrying the decree into effect; which writ shall issue in the same manner as other judicial writs; and all process issued shall be executed and returned to the clerk's office from whence the same issued on the return days thereof, by the officer or officers to whom the same shall be directed, and shall have the same operation and possess the

same force to all intents and purposes, as similar process issued upon judgments at common law, the officer or officers to whom any such process is directed, shall be subject to the like penalty for misconduct or neglect; and the court shall exercise in this, and in all cases relating to such process the same powers as if the said process had issued upon a judgment at common law; but nothing herein contained shall prohibit any party from proceeding to carry any order or decree in chancery into execution in any manner in which he might have availed himself, if this clause had never been enacted.

1796.

SEC. 3. When any writ of execution shall issue, and the party at whose suit the same issued shall afterwards desire to take out another writ of execution at his own proper costs and charges, the clerk may issue the same if the first writ be not returned and executed: and where upon a *capias ad satisfaciendum*, the sheriff shall return that the defendant is not found, the clerk shall issue a *feri facias*; and if upon a *feri facias* he shall return that the party hath no goods, or that only part of the goods is levied; in which case it shall be lawful to issue a *capias ad satisfaciendum* upon the same judgment; and where part of the debt shall be levied upon an *elegit*, a new *elegit* shall issue for the residue; and where *nihil* shall be returned upon any writ of *elegit*, a *capias ad satisfaciendum* or *feri facias* may issue, and so *vice versa*: and where one judgment is obtained against several defendants, execution shall issue thereon as if it were against one defendant, and not otherwise.

If the first writ be not returned & executed, another may issue.

Under what regulations.

SEC. 4. If a tenant by *elegit* be evicted of his title in the lands, tenements, or hereditaments, which he holds by virtue of any extent thereof by judgment had against him otherwise than by his own fraud and default; before satisfaction shall be made him for his debt, or damages and costs, he shall, and may have a writ of *scire facias* against the debtor, his heirs, executors or administrators, and may thereafter sue out such other writ of execution for the residue of his debt, or damages and costs, as shall appear to remain unpaid, as if no execution had been theretofore issued.

Proceedings in case a tenant by *elegit* shall be evicted.

SEC. 5. Where any judgment or recognizance shall be extended, the same shall not be avoided or delayed by occasion that any part of the lands or tenements extendible are, or shall be, omitted out of the extent.

Where lands may have been omitted out of the extent, judgment, &c. not to be void.

1796.

Remedy for
contribution on
an extent saved.

SEC. 6. Saving always to the party and parties whose lands shall be extended, his and their heirs, executors and assigns, his and their remedy for contribution against such person and persons whose lands are, or shall be omitted out of such extent from time to time.

Not to extend
to infants.

SEC. 7. *Provided*, nevertheless, that this act, or any thing herein contained, shall not be construed to give any extent or contribution against any heir within the age of twenty-one years, during such minority of such heir for or in respect of any lands to such heir descended further or otherwise than might have been made before the making of this act.

Estate bound
from the deli-
very of the writ
to the sheriff.

SEC. 8. No writ of *fiery facias*, or other writ of execution, shall bind the property of the goods, lands, tenements or hereditaments, against which such writ issued forth; but from the time such writ shall be delivered to the sheriff or other officer to be executed; and for the better manifestation of the said time, such sheriff or other officer, his deputy or agent, shall, upon the receipt of any such writ, without a fee for doing the same, endorse upon the back thereof the day of the month and year when he received the same; and if two or more writs shall be delivered against the same person on the same day that which was first delivered, shall be first satisfied.

Proceedings in
case of the
death of the
party in execu-
tion.

SEC. 9. If any person being in prison, charged in execution by reason of any judgment given against him, shall happen to die in execution, the party or parties at whose suit, or to whom any person shall stand charged in execution for any debt or damages recovered, his or their executors or administrators may (after the death of the person so dying in execution) lawfully sue forth and have execution against the lands, goods and chattels of the person so deceased: *Provided always*, that this act shall not extend to give liberty to any person or persons, their executors or administrators, at whose suit any such party shall die in execution to have or take a new execution against the lands, tenements or hereditaments, goods or chattels of such party dying in execution, which shall at any time after such judgment or judgments be by him sold *bona fide*, for the payment of any of his creditors, at whose suit he shall be in execution, and the money paid or secured to be paid to any such creditor with their privacy, in discharge of his or their debts or some part thereof.

Prov^o.

V. YEAR OF THE COMMONWEALTH.

541

SEC. 10. Where judgment shall be obtained in court of record for any debt or damages, and the person against whom such judgment shall be obtained, remove himself or his effects, or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court, where judgment was given at the request of the party for whom the same was rendered, to issue any writ of *feri facias* or *capias ad satisfaciendum*, or other legal judicial writ, and direct the same to the sheriff of any county within this state, where defendant or debtor, his goods or lands may be found; which said sheriff or other officer to whom the same shall be directed, is hereby empowered and required to serve and execute the same, and make return thereof to the court where the judgment was given.

1796.

SEC. 11. If the goods taken by any sheriff or other officer, or any part thereof, shall remain in his hands unsold, he shall make return thereof accordingly; and thereupon the clerk of the court from whence the execution issued, shall and may, and is hereby required to issue a *venditioni exponas* to such sheriff or other officer directed; whereupon the like proceedings shall be had as might and ought to have been had on the first execution; which writ shall be in the following form: "The commonwealth of Kentucky to the sheriff of _____ county, greeting: We command you that you expose to sale that estate of A. B. to the value of _____ which, according to our command you have taken into your hands, and which remains in your hands unsold as you have certified to our judges or justices of our _____ court to satisfy C. D. the sum of _____ whereof in our said court he hath recovered execution against the said A. B. by virtue of a judgment in the said court; and that you have, &c."

Where a *venditioni exponas* shall issue.

The form thereof.

SEC. 12. When any sheriff or other officer shall serve an attachment, or any writ of execution on any live stock, and the same shall not be immediately replevied and restored to the debtor, it shall and may be lawful for the sheriffs, and they are hereby required to provide sufficient sustenance for the support of such live stock until such stock shall be sold or otherwise legally discharged from such attachment or writ of execution; and upon the trial of any attachment or return of execution, the court before whom such attachment shall be levied, or

Sheriff to provide for live stock, taken in execution.

1796.

Court to make him allowance therefor.

such execution returned, may, and shall upon the motion of the officer serving the same, settle and adjust what such officer shall be allowed for his expences incurred by supporting such stock, to be taxed in the bill of costs against the party against whom judgment shall be given on such attachment, and the same shall be retained by the officer out of the money arising from the sale of such stock, and the said officer shall and may retain the expence for supporting such stock taken by execution as aforesaid, out of the money arising from the sale, to be settled in the manner aforesaid; and where the plaintiff in any attachment shall be cast, the expences aforesaid shall be taxed in the bill of costs against such plaintiff, for which the defendant may take execution with the other costs.

Estate on demised land, &c. not to be taken until the rent is paid or tendered.

SEC. 13. No goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, at will or otherwise, shall at any time hereafter be liable to be taken by virtue of any writ of execution, or on any pretence whatsoever, unless the party so taking the same shall, before removal of the goods from off such premises, pay or tender to the landlord or lessor thereof, or his agent, all the money and tobacco due for the rent of the said premises at the time of taking such goods or chattels in execution.

Provided there be not more than one year's rent in arrear.

SEC. 14. *Provided*, nevertheless, that such rent arrear do not amount to more than one year's rent; and if more be due then the party suing out such execution paying or tendering to such landlord, or his agent, one year's rent, may proceed to execute his judgment; and the sheriff or officer serving the same is hereby empowered and required to levy, and pay to the plaintiff as well the money or tobacco so paid for rent, as the execution money.

When & how sheriff to sell estate taken in execution,

SEC. 15. And when any sheriff or other officer, shall take the goods and chattels of any person whatsoever by any writ of *feri facias*, and the owner of such goods and chattels shall not, within twenty days after such taking, satisfy the party suing out such writ, his debt, damages and costs, such sheriff or officer shall, and may lawfully sell by auction the goods and chattels so taken, or so much thereof as shall be sufficient to satisfy the judgment, for the best price that can be had for the same, but shall give

notice of the time and place of such sale, at least ten days at the court-house door, and at the meeting-house door, and most public places within the county where such goods shall be taken in execution, by advertising the same.

1796.

SEC. 16. If the owner of any goods and chattels taken by virtue of any execution, shall give sufficient security to the sheriff or officer taking the same, to have the same goods and chattels forthcoming at the day of sale, it shall be lawful for the sheriff or officer to take a bond from such debtor, or securities payable to the creditor, reciting the service of such execution and the amount of the principal, interest and costs due thereon, distinguishing particularly the principal, interest and costs, and with condition to have the goods and chattels forthcoming at the day of sale appointed by the sheriff or officer, and shall thereupon suffer the goods and chattels to remain in the possession, and at the risk of the debtor until that time; and if the owner of such goods and chattels shall fail to deliver up the same according to the condition of the bond, or pay the money therein mentioned in the execution, such sheriff or officer shall return the bond to the office of the clerk of the court from whence such execution issued, to be there safely kept and to have the force of a judgment; and thereupon it shall be lawful for the court where such bond shall be lodged, upon motion of the person to whom the same is payable, his executors or administrators, to award execution for the amount therein mentioned, with interest thereon from the date of the bond 'till payment and costs, provided the obligors, their executors or administrators, or such of them against whom execution is awarded, have ten days previous notice of such motion, and upon such execution the sheriff or officer shall not take any security, either for the forthcoming of the goods at the day of sale, or the payment of the money at a future day, but shall levy the same immediately, and keep in his hands the goods and chattels taken thereupon, until he shall have sold sufficient thereof to raise the money due on such execution, or the same be otherwise satisfied; and for the better direction of such officer, the clerk shall endorse upon such execution that "no security of any kind is to be taken."

Bonds for delivery of property at sale may be taken.

By whom and in what manner.

Proceedings thereon.

SEC. 17. If any sheriff or other officer shall fail to deliver or return any bond taken for the forthcoming of

1796.

Penalty on officer's failing to return the same and how recoverable.

property by virtue of this act within sixty days after the date thereof, to the office of the clerk of the court from whence such execution issued, such sheriff or officer shall be fined by the next succeeding court, at the discretion of such court, not exceeding ten pounds for every month of such failure; provided the sheriff or officer have ten days previous notice of the motion for judgment for such fine, and shall be moreover liable to the party aggrieved.

A debtor may release his body by delivering property to satisfy debt.

SEC. 18. Where any writ of *capias ad satisfaciendum* has been, or shall be served on any debtor, it shall be lawful for such debtor to tender to the sheriff or officer serving the same, lands, slaves or personal property to the value of the debt and costs for which such execution was issued, or may hereafter issue; which property the said sheriff or officer shall receive and proceed to sell in like manner as in case of estate taken in execution upon a writ of *feri facias*, and shall, where slaves and personal property is tendered, discharge such debtor out of custody: but where lands are tendered, the sheriff shall proceed to sell the same, but shall not discharge the body of the debtor until the money, interest and costs are made.

But if not sufficient or under a new execution may issue.

SEC. 19. *Provided always*, that if such estate so tendered shall not be sufficient to satisfy the debt, damages and costs, or shall be under any lien or incumbrance so that the whole cannot be sold, a new *capias ad satisfaciendum* or *feri facias* at the option of the plaintiff, shall issue for any balance; and the clerk of the court from whence such execution originally issued, shall upon the return of the sheriff of the insufficiency or incumbrance as aforesaid, issue a new *capias ad satisfaciendum* or *feri facias*, if required; but where such property shall have been under any incumbrance, the debtor shall not be at liberty to tender lands, slaves or personal property, on a second *capias ad satisfaciendum* being served, or in case of a *feri facias*, in consequence of such return, avail himself of the right to replevy for three months, if the contract should have been made before the first day of February, one thousand seven hundred and ninety-three.

On which no other property can be tendered or any replevy had.

Slaves not to be taken, if other property can be had.

SEC. 20. No sheriff or other officer to whom any writ of *feri facias* shall be directed, shall take in execution any slave or slaves, provided there be shown to such sheriff or other officer by the defendant, or any other person in his behalf, sufficient, either lands, goods or chattels, of such defendant within the settled part of the country,

upon which he may levy the debt and costs mentioned in such *feri facias*; and no collector of any officer's fees, or of the public revenue or county levies, shall seize or make distress upon the slaves of any person for such fees, taxes or levies, if other sufficient distress can be had: and no sheriff or other officer or collector of taxes, fees or levies, shall make or take unreasonable seizures or distresses; and if any sheriff or other officer or collector as aforesaid, shall act contrary hereunto, such sheriff, officer or collector, shall be liable to the action of the party grieved, grounded upon this act, wherein the plaintiff shall recover his full costs, although the damages given do not exceed forty shillings.

1796.

Officers not to make unreasonable distresses.

SEC. 21. Where any judgment has been, or shall be hereafter obtained upon any contract made and entered into before the first day of February, one thousand seven hundred and ninety-three, the clerk shall (for the direction of the sheriff) endorse upon each and every execution issued upon the said judgment, that the contract was made and entered into before the said day, if it shall so appear from the declaration, writ, or from any bond, bill, note or other writings admitted as evidence, and filed in the suit.

Clerk to endorse on executions the time of entering into the contract.

SEC. 22. Where any execution so endorsed shall be served upon the estate of any debtor for any debt contracted before the first day of February, one thousand seven hundred and ninety-three, if such debtor shall, at or before the day of sale, tender sufficient security to be bound with him to pay the amount of the judgment on which such execution was granted, and also all costs, with lawful interest for the same, to such creditor, within three months, then the sheriff or other officer shall return to such debtor the estate so taken; and where no such security shall be offered, and the estate so taken in execution cannot be sold for three-fourths of its value at least in the opinion of the sheriff or other officer, he shall put up and sell the same for the best price that can be had in money, to be paid at the end of three months, and shall take bond from the buyer or buyers, with one or more sufficient securities to pay the same accordingly with interest, to such creditor; and all and every bond or bonds so taken in pursuance of this, shall mention that the same was or were entered into for estate taken in execution, and restored to the debtor, or sold to the ob-

Debtor may replevy on certain judgments.

Replevy bonds to be taken.

1796

To be returned
to the clerk's
office and when

To have the
force of judg-
ments.

Execution may
issue thereon.

Clerk to en-
dorse "no se-
curity shall be
taken."

Provido not to
extend to the-
riffs or public
collectors.

Where bonds
are quashed a
new execution
may issue.

Where on a sale
the amount
shall exceed the
debt, the sur-
plus shall be
paid to the deb-
tor.

Remedy against
the officer for
failing to pay.

ligor or obligors (as the case may be) and before the expiration of the time aforesaid, shall be returned by the sheriff or officer taking the same to the office of the clerk of the court whence the execution issued, there to be safely kept, and shall have the force of a judgment; and if the money shall not be paid according to the condition of any such bond, it shall be lawful for the clerk of the court with whom such bond or bonds may be lodged, upon application of the party to whom the same is payable, to grant an execution thereupon with costs; and upon such execution the sheriff or officer shall not take any security for payment of the money at a future day, but shall levy the same immediately, and the clerk shall endorse on the back of any such execution, that "no security shall be taken;" provided always, that nothing in this act contained shall be construed to extend to any execution upon any judgment obtained against a sheriff or other collector of levies, or officer's fees, or public revenue, or for any debt to any public creditor put into his hands to collect, or upon any judgment obtained against any attorney for money received by him for his client, or against a principal by his security; but such execution shall and may be proceeded upon immediately, and no security shall be taken or further time allowed, any thing in this act to the contrary notwithstanding.

SEC. 23. If a replevy or forthcoming bond be at any time quashed as faulty, the obligee or obligees in such bond (besides his or their remedy against the sheriff) may, moreover, have execution on his or their judgment in the same manner as if such replevy or forthcoming bond had never been taken.

SEC. 24. Where upon a sale under any execution, the amount of such sale shall exceed the principal, interest and costs, the sheriff or officer shall pay such excess or surplus to the debtor, his executors, administrators or agent; and if any sheriff shall fail or refuse to pay such surplus or excess when required, such sheriff or officer, his or their security or securities, his or their executors or administrators, shall every and each of them be liable to the like penalty and judgment in favor of the debtor, as is herein directed in favor of the plaintiff against a sheriff for money levied on an execution.

SEC. 25. When a sheriff, or other officer under any execution, shall receive the whole or any part of the mo-

ney or tobacco for which the said execution issued, and the person against whom such execution may have issued, his executors or administrators shall obtain an injunction to such execution, or for any part of the money or tobacco mentioned therein, before the money or tobacco so received by such sheriff or officer is paid to the plaintiff, his agent or attorney, or his executors or administrators : in any such case the sheriff or other officer, his executors or administrators, shall repay to the person or persons against whom such execution issued, his executors, administrators or agent, the money or tobacco so received, or such part thereof as may be enjoined ; and if any sheriff or other officer, his or their executors or administrators, shall fail or refuse when required to pay such money or tobacco so received, or such part thereof as may be enjoined to the person having a right to demand and receive the same : such sheriff or other officer, and their securities, his and their executors and administrators, and every of them, shall be liable to the like penalty and judgment in favor of the person, his executors or administrators, by whom the said injunction is obtained as is herein directed in favor of the plaintiff against the sheriff, for not paying the money or tobacco levied on an execution.

1796.

Where an injunction is obtained, the money received by sheriff shall be returned to the debtor.

Remedy against the officer for failing or refusing to pay the same.

SEC. 26. If any person or persons taken or charged in execution, shall enter into bond with good and sufficient security, under a reasonable penalty, upon condition he or they shall not depart or go out of the rules or bounds of the prison to which he or they shall be committed, it shall be lawful for the sheriff or officer in whose custody such prisoner or prisoners shall be, to permit him or her or them, to go out of the prison and return at pleasure.

Bonds to keep the prison rules may be taken.

SEC. 27. And for relief of insolvent debtors who shall be taken in execution, and to prevent the long imprisonment of unfortunate people which can be no benefit, but may be rather a disadvantage to their creditors : *Be it enacted*, that if any person or persons now are, or shall be hereafter taken or charged in execution, and shall have remained in prison for the space of twenty days, it shall be lawful for any two justices of the peace of the county, upon the petition of the prisoner or prisoners, by warrant under their hands and seals, to require the sheriff, jailor, or keeper of the prison in such county, to bring the body of such prisoner or prisoners before them

How insolvent debtors may be discharged from confinement.

1796.

Shall deliver a
schedule of his
estate, and take
an oath.
The form
thereof.

at the court-house on a certain day, together with a list of the several executions with which he or they may stand charged in the said jail ; which warrant every such sheriff, jailor or keeper, is hereby commanded to obey, and notice shall be given thereof to the party or parties, his or their executors, administrators or agent, at whose suit such prisoner shall be in execution if living within the county, and such prisoner coming before the justices shall subscribe and deliver in a schedule of his whole estate, and take the following oath : " I, A. B. do, in the presence of Almighty God, solemnly swear or affirm (as the case may be) profess and declare the schedule now delivered, and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery of all the estate, goods and effects unto me in any wise belonging, and such debts as are unto me owing, or to any person in trust for me, and of all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or my use, or any person or persons in trust for me ; and that I, or any person or persons in trust for me, have no lands, money, stock or any other estate, real or personal, in possession, reversion or remainder, of the value of the debt or debts with which I am charged in execution ; and that I have not directly or indirectly, sold, lessened, or otherwise disposed of, in trust or concealed, all or any part of my lands, goods, stocks, debts, securities or estate, whereby to secure the same, to receive or expect any profit or advantage thereof, to defraud or deceive any creditor or creditors to whom I am indebted in any wise however." Which schedule being so subscribed in the presence of the justices, shall be lodged with the clerk of the court for the information of the creditors of such prisoners.

The estate contained on the schedule vested in the sheriff.

SEC. 38. The lands, tenements and hereditaments which shall be contained in such schedule for such use, right and interest, or title, as such prisoner or prisoners then shall have in the same, which he may lawfully depart with all, reserving to the wife of such debtor her right of dower therein ; and also all goods and chattels whatsoever in such schedule contained, shall be vested in the sheriff of the county wherein such lands, tenements, hereditaments, goods and chattels, shall lie or be found ; and such sheriff is hereby authorized, empowered and

required to sell and convey the same to any person or persons whatsoever, for the best price that can be got for the same; and the money arising by such sale shall be by such sheriff or officer paid to the creditor or creditors, at whose suit such prisoner or prisoners shall be imprisoned, saving to every such prisoner his necessary apparel and utensils of trade, and all such of his arms and accoutrements as every militia man is required to keep by the militia laws; and after delivering such schedule and taking such oath, it shall be lawful for the said justices by their order, to command the sheriff, jailor or keeper of the prison within the county, forthwith to set at liberty such prisoner; which order shall be accordingly obeyed, and shall be sufficient to discharge and indemnify such sheriff or other officer against all escape or escapes, action or actions whatsoever, which shall be or may be brought or prosecuted against him or them by reason thereof; and if any action shall be commenced against any sheriff or other officer for performing his duty in pursuance of this act, he may plead the general issue and give this act in evidence; and notwithstanding such discharge, it shall be lawful for any creditor or creditors at whose suit such insolvent prisoner was imprisoned, at any time afterwards to sue out a writ of *fieri facias*, to have execution against the estate which such insolvent person shall thereafter acquire or be possessed of.

SEC. 29. When any insolvent debtor shall be discharged pursuant to this act, and the schedule subscribed and delivered in by such prisoner, shall contain money or tobacco due to such prisoner, or of goods, chattels and estates to him belonging, or in the possession of any other, in that case the clerk of the court with whom the schedule is directed to remain, shall immediately issue a summons against each of the persons named as debtors in the said schedule, and against such others as are therein said to have possession of any goods, chattels or estates, of the property of the prisoner, reciting the sum of money or the quantity of tobacco he or she is charged with, or the particular goods, chattels or estates, said to be in his possession, and requiring him or her to appear at the next court, and to declare on oath whether the said money or tobacco, or any part thereof, be really due to such prisoner; or whether such goods, chattels or estates, or any of them, be really in his or her possession, and are

1796

Who is to sell and convey the same, and pay the money to the creditor.

Dower, &c. saved.

Sheriff indemnified against actions for an escape.

Debtor's discharge no bar to proceedings against any estate he may acquire afterwards.

His estate in possession of, or due from others how recoverable.

1796.

the property of such prisoner ; and if the person so summoned shall fail to attend according to such summons, or to shew good cause for his non-attendance, it shall be lawful for the court to enter judgment against every such person for the money, tobacco, goods, chattels or estates, in such schedule mentioned, together with costs of suit, a lawyer's fee excepted ; and if such person so summoned shall appear and be sworn, judgment shall be entered for so much of the tobacco, money, goods, chattels or estates, as he or she shall acknowledge to be due, or to be of the property of such prisoner, and in his possession, with costs as aforesaid ; which judgment shall be entered in the name of the sheriff, who may thereupon proceed to levy executions as in other cases, and to dispose of the money, goods, chattels or estates so recovered, in the same manner as by this act he is directed to dispose of the other effects.

Not barred by judgment against garnishee for part, from claiming the residue.

SEC. 30. *Provided always*, that where any such garnishee shall not acknowledge the whole money, or tobacco, to be due, or all the goods, chattels or estates mentioned in the schedule, to be of the property of the prisoner and in his possession ; the sheriff or such prisoner at any time after (unless barred by any of the several acts limiting the times of the commencement of actions) shall be at liberty to claim the residue by legal process ; and the former judgment, as to such garnishee, shall be no further bar in such process than for so much money or tobacco, or such goods, chattels and estates, as the garnishee is thereby ordered to pay and deliver.

Allowance to the sheriff what and how paid.

SEC. 31. Every sheriff shall be allowed to retain out of the effects of such insolvent debtor, before the distribution thereof, all reasonable expences in recovering such money, tobacco, goods, chattels and estates as aforesaid, including such fee to a lawyer for the proceeding against a garnishee, as shall be judged reasonable by the court ; and if such effects be not sufficient, he shall be reimbursed such expences by the creditor or creditors, if more than one, in proportion to their demands.

Fees for keeping insolvent debtors how paid. For the first 20 days to be paid by the county.

SEC. 32. Where any person now is, or hereafter shall be committed for any debt or damages whatsoever, and shall not be able to pay his or her ordinary prison fees, such of the said fees as shall become due for the first twenty days of imprisonment, shall be discharged by the county ; and the sheriff or jailor may demand and recover of the par-

ty or parties at whose suit such insolvent prisoner shall be imprisoned, all such fees as shall become due after the expiration of the said twenty days, until the creditor shall agree to release such prisoner : and if the creditor, upon notice hereof given him, or her, his or her attorney or agent, shall refuse to give security to the sheriff or jailor for payment of such prison fees, or shall fail to pay the same when demanded, it shall and may be lawful for the sheriff or jailor to discharge such debtor out of prison ; *Provided*, nevertheless, that such insolvent prisoner shall afterwards be liable to the action of the creditor to recover such fees ; and such creditor shall and may, notwithstanding his consent to releasing such prisoner, afterwards sue out a *scire facias* to have a new execution against the estate of such prisoner, in case he or she shall afterwards become possessed of any.

1796.
Afterwards by
the creditor.

*Provide that the
creditor may af-
terwards reco-
ver such fees.*

SEC. 33. When a debtor is in custody on several executions, it shall not be lawful for such debtor to demand any more or other dieting than if he was in custody on one execution only ; nor shall any sheriff or jailor demand or receive any more than the rate fixed by law in case of a debtor confined in one execution, which shall be paid by the creditor at whose suit such debtor was first taken.

Debtor to de-
mand dieting on
one execution
only.

SEC. 34. Where any writ of execution or attachment for not performing a decree in chancery shall come into the possession of any sheriff or other officer, and he shall fail to return the same to the office from whence it issued, on or before the return day thereof, it shall be lawful for the court (ten days previous notice being given) upon the motion of the party injured, to fine such sheriff or other officer at their discretion in any sum not exceeding five pounds per month, for every hundred pounds contained in the judgment or decree on which the execution or attachment so by him detained, was founded ; and so in proportion for any greater or less sum, counting the aforesaid months from the return day of the execution or attachment, to the day of rendering the judgment for the said fine.

*Proceedings a-
gainst officers
for failing to
return execu-
tions.*

SEC. 35. If any sheriff or other officer shall make return upon any writ of *feri facias*, *venditioni exponas*, or other writ of execution, that he hath levied the debt, damages and costs as in such writ is required, or any part thereof, and shall not immediately pay the same to the

*For failing to
pay money, &c.
received on ex-
ecutions.*

1796.

party to whom the same is payable, or his attorney, or shall return upon any writ of *capias ad satisfaciendum*; or attachment, for not performing a decree in chancery for payment of any sum of money or tobacco, that he hath taken the body or bodies of the defendant or defendants, and hath the same ready to satisfy the money or tobacco in such writ mentioned, and shall have actually received such money or tobacco of the defendant or defendants, or suffered him, her or them to escape with the consent of such sheriff or officer, and shall not immediately pay such money or tobacco to the party to whom the same is payable, or his attorney, that then, and or in either the said cases, it shall and may be lawful for the creditor at whose suit such writ of *feri facias*, *venditioni exponas*, *capias ad satisfaciendum*, or other writ of execution or attachment, shall issue, upon a motion made to the next succeeding court from whence such writ shall issue, to demand judgment against such sheriff or officer for the money or tobacco mentioned in the writ, or so much as shall be returned levied in such writ of *feri facias*, *venditioni exponas*, or other writ of execution, with interest thereon, at the rate of fifteen per centum interest per annum, from the return-day of the execution, until the judgment shall be discharged; and such court is hereby authorised and required to give judgment accordingly, and to award execution thereupon, provided such sheriff or officer have ten days previous notice of such motion.

Creditor not resident in the county to appoint an agent, and for what,

SEC. 36. And whereas it is unreasonable that sheriffs should be obliged to go out of their counties to give notice to creditors at whose suit any person may be in custody of such sheriff, or to pay money levied by execution: *Be it further enacted*, That where any execution shall be delivered to the sheriff of any other county than that wherein the creditor resides, such creditor shall name some person resident within the county where the execution is to be levied, to be his or her agent for the particular purpose of receiving the money in such execution, and for giving to, and receiving any notice from the sheriff which may be necessary relating thereto; and payment made and notice given to such agent, shall be as effectual as if made or given to the creditor: and if any creditor shall fail to appoint such agent, no judgment shall be entered against the sheriff for non-payment of the

money and tobacco mentioned in such execution, unless a demand thereof shall have been first made of the sheriff in his county by the creditor or some other person having a written order from him; nor in case of failure in appointing such agent, shall the sheriff or prisoner be obliged to give notice previous to the discharge of such prisoner, either for want of security for his prison fees, or upon his taking the oath of an insolvent debtor; but such prisoner may be discharged in those cases respectively without any notice to be given to the creditor so failing.

1796.

Sec. 37. When any property is taken by the constable by virtue of his office, he may, on the person or persons from whom such property shall be taken giving bond and sufficient security for the delivery of such property at the day of sale, suffer it to remain in the possession of the debtor: but when such person or persons shall not be able, or shall refuse to give such security in either case, and the property shall consist of live stock, the constable shall take care of the same, and allowance shall be made him out of the money arising from the sale of such property, to be judged of by the said justice to whom the execution is returned; and the constable shall be allowed one shilling and three pence for taking such bond, and there shall not be more than fifteen days between the constable's executing and selling any property taken by execution: the constable shall give ten days notice of such sale by advertisement at the most public place or places in the neighbourhood, of the time and place of such sale, where the person or persons may reside from whom such property is taken.

Constables may
take bond for
delivery of pro-
perty.

To provide for
live stock.

Sec. 38. Where a bond shall be given for the delivery of property, and the same shall not be delivered at the day of sale agreeable to the tenor of said bond, the constable shall give five days previous notice to the principal or security, (or both) in person, or in writing left at his or her place of abode, that he will move against him or them, (naming the justices and particular day) for judgment for the amount of the debt and costs; and upon obtaining such judgment, the constable shall proceed to execute and sell accordingly.

Proceedings on
bonds taken by
constables.

1796.

CHAPTER CCLXXV.

An ACT to reduce into one, the several acts to ascertain the boundaries of, and for processioning Lands.

Approved, December 19, 1796.

See the prelection to chap. 186.

The provisions of an act of 1748, were more ample and definite on this subject, but it is doubtful whether any of them are in force.

Preamble.

WHEREAS many inconveniencies may arise to the citizens of this commonwealth in case of the death of the only person or persons by whom their improvements, boundaries, and the specialty of their entries can be established, and on which their titles to lands depends : for remedy whereof,

Proceedings to perpetuate testimony, &c.

Commissioners to be appointed

Their power and duty.

To take the testimony of witnesses.

To cross examine witnesses & invalidate their testimony

SECTION 1. *Be it enacted by the general assembly, That* it shall and may be lawful for the county courts, on application of any person or persons claiming land within the said county, to order their clerk to issue a warrant directed to three or more justices of the peace for the county, or other fit persons, who shall be named commissioners, they, or any two of them, to attend such person or persons making application for the same, at their improvement or boundary of their lands, on any special place called for in their entry ; and the commissioners so appointed shall have full power, and they are hereby required by their warrants directed to the constable, or some other fit person who will execute the same, to cause to come before them such witness or witnesses, as well without as within the county, as the person or persons about to establish his or their improvement, boundary, or special place called for in their entry, may require. And the said commissioners are hereby authorised to examine on oath, the said witness or witnesses touching the premises, and take the same in writing, which shall be signed by the deponent or deponents, and attested by the commissioners, who shall make return thereof to the clerk of the court, and the clerk shall enter the same on record. And it shall and may be lawful for any person or persons who may have an interfering claim or claims to the lands of which the improvement, boundary, or specialty on which the title to said land depends, is about to be established as aforesaid, to attend and cross examine the witness or witnesses produced to establish the same, or to bring forward his witness or witnesses before said commissioners for the purpose of invalidating

the testimony of the witnesses aforesaid, or to establish other facts relative to the improvement, boundary or specialty on which the title to the land in dispute depend. In which case the commissioners shall examine such witness or witnesses on oath, and return their depositions in the manner and form aforesaid to the clerk of the court, and the clerk shall enter the same on record.

SEC. 2. *And be it further enacted*, That where any deposition has heretofore been taken to establish any specialty call in an entry, or to prove the beginning of an entry or otherwise, it shall be lawful for the opposite party to take depositions agreeable to the directions of this act, to disprove any thing contained in the deposition taken as aforesaid; and all depositions taken agreeable to this act, shall be considered as taken *de bene esse*. And every person making application to the court for the purpose aforesaid, shall have to attend him or them to his improvement, boundary, or special place called for in his entry about to be proved, two or more disinterested persons being residents of said county, who shall be present when the witness or witnesses shall be sworn and examined: and it shall and may be lawful, if to the commissioners it appear necessary, to cause the line trees to be marked afresh, or do whatsoever else in their judgment may be deemed proper to perpetuate the improvement, boundary, or special place called for in the entry on which the title to such land or lands may depend: *Provided however*, that any thing done in pursuance of this act, shall in no wise affect the title of the aforesaid land or lands adjacent, or interfering claims of any person or persons, bodies politic or corporate; but only relate to the boundaries of lands, scite of improvement, or any special place called for in the entry.

SEC. 3. Any person or persons applying for commissioners agreeable to this act, shall give fifteen days previous notice to the owner or owners, their agents or attorneys if known, who have lands adjoining, of the time and place of meeting to prove their improvement, boundary, or special place called for in the entry; and if the owner or owners, their agents or attorneys, are not known or reside out of this state, the applicant shall have the same published three weeks successively in the Kentucky Gazette, describing as particularly as may be, the improvement, boundary, or special place called for in the entry about to be proved.

1796.

Witnesses may be produced to disprove facts before sworn to by others.

Depositions taken considered only *de bene esse*.

Disinterested persons to attend & fix what

Commissioners may mark the lines again, &c.

Provido.

Notice to be given, how and to whom.

1796.

Fees to the
clerk.
Commissioners,
Witnesses.

SEC. 4. The clerk shall be allowed three shillings for issuing a warrant to the commissioners, and three shillings for recording each deposition. And the commissioners shall be entitled to four shillings per day for their services ; each witness shall have the same allowance made him, as he would be entitled to provided he was summoned to attend court, and shall be subject to the like penalties and forfeitures, as in case of his failing or refusing to attend ; and the whole shall be at the costs and expence of the party applying to have the business done.

Recital.

SEC. 5. Whereas it is represented to the present general assembly, that the land marks in this state, some of which are destroyed by fire and otherwise, particularly the corner trees, so that in a few years the bounds and corners cannot be ascertained : For remedy whereof,

Proceffioners to
be appointed &
their duty.

Be it enacted by the general assembly, That the county courts throughout this commonwealth, shall as soon as may be, proceed to lay off their counties into districts, as to them may seem most convenient, for the purpose of proceffioning or going round every person's land, and appointing one or more fit persons in each district, commissioners for the said purpose, who, or any two of whom shall, on application of any person producing his title papers, go round his land and re-mark the same ; taking care that the said re-marks are on the old lines ; and when they find the corner tree, stones or posts, or any of them removed, defaced or rotten down, so that it is probable it will in some future period put it out of the power of the owner or owners to establish the same, the said commissioners shall proceed by comparing the title papers ; and finding the same so removed, defaced or rotten down, make new corner trees, place stones or posts, or where any one is out of the way, add one or more, as to them may seem right, and give a certificate thereof, certifying whose lands and what alterations or corner trees, stones or posts, have been added ; which certificate shall be returned to the clerk of the said county where the land lies, and it being approved of by the court, shall be entered by the clerk in a book to be kept by him for that purpose. Each commissioner for every day he is in service, shall receive the sum of four shillings, and the clerk, for every record of a certificate, shall receive the sum of one shilling and six pence, which

Their allow-
ance.

V. YEAR OF THE COMMONWEALTH.

557

shall be paid by the person applying for the same.

1796.

Provided, that in all cases where depositions are taken by both parties, the expence shall be divided.

Proviso.

CHAPTER CCLXXVI.

An ACT to reduce into one the several acts directing the course of Descents.

Approved December 19, 1796.

This act was copied from one of 1785, and one of 1790.

SECTION 1. *BE it enacted by the general assembly*, That henceforth when any person, having a title to any real estate of inheritance, shall die intestate, as to such estate it shall descend and pass in parcenary to his kindred, male and female, in the following course, that is to say,

How decedant's estate to descend.

SEC. 2. To his children, or their descendants, if any there be.

To his children

SEC. 3. If there be no children, nor their descendants, then to his father.

To his father.

SEC. 4. If there be no father, then to his mother, brothers and sisters, and their descendants, or such of them as there be.

Mother, brothers &c.

SEC. 5. Where an infant shall die without issue, having title to any real estate of inheritance, derived by purchase or descent from the father, the mother of such infant shall not succeed to, nor enjoy the same, nor any part thereof, if there be living any brother or sister of such infant, or any brother or sister of the father, or any lineal descendant of either of them, saving however to such mother any right of dower which she may claim in the said real estate of inheritance.

Mother not to inherit in certain cases.

SEC. 6. Where an infant shall die without issue, having title to any real estate of inheritance, derived by purchase or descent from the mother, the father of such infant, nor any issue which he may have by any person other than the mother of such infant, shall succeed to, or enjoy the same, or any part thereof; if there be living any brother or sister of such infant, or any brother or sister of the mother, or any lineal descendant of either of them, saving however to such father the right which he may have as tenant by the curtesy in the said estate of inheritance.

Father not to inherit in certain cases.

1796

Divided into
moieties & how
disposed of.

Grand father.
Grand mother.

Great-grand
father.

Great-grand
mother.

To nearest lin-
eal male ances-
tor.

Then female.

No right to ac-
cure unless the
person be in be-
ing.

Where no kin-
dred on part of
the mother, all
to go to the fa-
ther's and vice
versa.

Half blood how
to inherit.

SEC. 7. If there be no mother, nor brother, nor sister, nor their descendants, then the inheritance shall be divided into two moieties, one of which shall go to the paternal, the other to the maternal kindred in the following course, that is to say,

SEC. 8. First to the grand-father.

SEC. 9. If there be no grand-father, then to the grand-mother, uncles and aunts on the same side, and their descendants, or such of them as there be.

SEC. 10. If there be no grand-mother, uncles nor aunts, nor their descendants, then to the great grand-fathers, or great grand-father, if there be but one.

SEC. 11. If there be no great grand-father, then to the great grand-mothers, or great grand-mother, if there be but one; and the brothers and sisters of the grand-fathers and grand-mothers, and their descendants, or such of them as there be.

SEC. 12. And so on in other cases without end, passing to the nearest lineal male ancestors, and for the want of them, to the lineal female ancestors in the same degree; and the descendants of such male and female ancestors, or to such of them as there be.

SEC. 13. But no right in the inheritance shall accrue to any persons whatever other than to children of the intestate, unless they be in being and capable in law to take as heirs at the time of the intestate's death.

SEC. 14. And where for want of issue of the intestate, and of father, mother, brothers and sisters, and their descendants, the inheritance is before directed to go by moieties to the paternal and maternal kindred: if there should be no such kindred on the one part, the whole shall go to the other part; and if there be no kindred either on the one part or the other, the whole shall go to the wife or the husband of the intestate: and if the wife or husband be dead, it shall go to his or her kindred in the like course as if such wife or husband had survived the intestate, and then died entitled to the estate.

SEC. 15. And in the cases before mentioned, where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood to the intestate, and other part of the half blood only, those of the half blood shall inherit only half so much as those of the whole blood; but if all be of the half blood, they shall have whole por-

V. YEAR OF THE COMMONWEALTH.

559.

tions, only giving to the ascendants (if there be any) double portions. 1796.

SEC. 16. And where the children of the intestate, or his mother, brothers and sisters, or his grand-mother, uncles and aunts, or any of his female lineal ancestors, living with the children of his deceased lineal ancestors, male and female, in the same degree come into the partition, they shall take *per capita*, that is to say, by persons; and where a part of them being dead and a part living, the issue of those dead have right to partition; such issue shall take *per stirpes*, or by stocks, that is to say, the share of their deceased parent.
 Where to take per capita,
 Where per stirpes.

SEC. 17. And where any children of the intestate, or their issue, shall have received from the intestate in his life time, any real estate by way of advancement, and shall choose to come into partition with the other partners, such advancement shall be brought into hotchpot with the estate descended.
 Where estate shall be brought into hotchpot.

SEC. 18. In making title by descent, it shall be no bar to a demandant that any ancestor, through whom he derives his descent from the intestate, is or hath been an alien. Bastards also shall be capable of inheriting or transmitting inheritance on the part of their mother in like manner as if they had been lawfully begotten of such mother.
 Alienage no bar to descent.
 Bastards may inherit on the part of mother.

SEC. 19. Where a man, having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimated. The issue also in marriage deemed null in law, shall, nevertheless, be legitimate.
 Certain issue legitimated.

SEC. 20. Wherever any lands shall descend from a person dying intestate to two or more heirs, any one of whom shall be an infant, *feme covert*, *non compos mentis*, or beyond sea, and the dividend of each heir shall not exceed the value of thirty pounds in the opinion of any court of chancery, it shall be lawful for such court to direct the sale of such lands, and the distribution of the money arising therefrom according to the rights of each claimant: *Provided always*, that each heir residing within this commonwealth, shall be first duly summoned to shew cause (if any he can) against such sale: and where any heir shall reside without this commonwealth, the court shall make an order for publication, which or-
 Where estates when divided, exceed not 30l. to be sold.
 Provided.

1796.

One parcener
may maintain
waste against a-
nother.

der being inserted in the Kentucky Gazette for eight weeks successively, shall be considered as a summons.

SEC. 21. One parcener may maintain an action of waste against another; but no parcener shall have or possess any privilege over another in any election, division or matter, to be made or done concerning lands which shall have descended to them.

CHAPTER CCLXXVII.

An ACT establishing the Court of Appeals.

Approved December 19, 1796.

See the prelection to chap. 24.

Court of ap-
peals to con-
sist of 3 judges.

SECTION 1. *BE it enacted by the general assembly,* That the court of appeals shall consist of three judges, any two of whom shall be sufficient to constitute a court; one of them shall be called chief justice of Kentucky, another the second judge of the court of appeals, and another the third judge of the court of appeals, and shall be commissioned and have precedence accordingly.

To take oath,
Form.

SEC. 2. Every person so commissioned, before he enters upon the duties of his office, shall take the following oath or affirmation, to wit: "I A. B. do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as a judge of the court of appeals, according to the best of my abilities and understanding, agreeably to the constitution and laws of Kentucky. So help me God:" omitting in the case of an affirmation, the words "so help me God." Which oath or affirmation may be administered by any justice of the peace: and the certificate of the taking of which shall be recorded in the court of appeals.

By whom ad-
ministered.

Terms of the
court, how ma-
ny, where held
and their dura-
tion.

SEC. 3. The said court shall be holden three times in every year, namely, on the months of May, July and October, at the state-house in Frankfort; that each term shall continue for the space of thirty juridical days, unless the business depending before the said court shall be sooner dispatched; but the said court shall have power to prolong their session beyond the term, for expediting the business depending before them, if they shall see cause.

SEC. 4. The court of appeals, or the judges thereof in vacation, shall appoint the clerk of the said court, who, before he enters upon the duties of his office, shall take the oath prescribed by the constitution, to be taken by all officers of the commonwealth, and shall give bond to the governor for the time being, in a reasonable penalty, with one security at least, to be approved by the said court, or the judges thereof; conditioned faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and orders of the said court; which bond shall be recorded in the said court of appeals, and shall not be void on the first recovery, but may be put in suit and prosecuted from time to time, at the costs and charges of any party or parties injured, until the whole sum of the penalty expressed in such bond be recovered thereon.

1796.

Clerk of, how appointed; to take oath and give bond.

The condition thereof.

SEC. 5. The court of appeals shall, annually, appoint one of the judges thereof to inspect the clerk's office of the said court, and to report to the next session of the said court, the condition in which he shall find the papers and records, which report shall be recorded.

Clerk's office to be annually inspected.

SEC. 6. The sheriff of the county in which the court of appeals shall be held, shall be adjudged to be an officer of the said court, and shall attend the same with a sufficient number of deputies accordingly; and the said sheriff and his deputies shall be bound to perform the duties of sheriff, tipstaff and crier.

What sheriff is to attend the court, and his duty.

SEC. 7. In all cases in which the sheriff and his deputies attending the court of appeals shall be interested, or shall not be an indifferent person, the duty of such sheriff shall be performed by such disinterested or indifferent person as the court of appeals may appoint, and the person so appointed is hereby authorized to perform the same.

Provision where sheriff is interested.

SEC. 8. There shall be no discontinuance of any suit, process, matter or thing, returned to or depending in the court of appeals, although a quorum of judges shall fail to attend at the commencement, or any other day of any session; but if a majority of them shall fail to attend at the commencement of any session, any judge of the said court, or the sheriff attending the same, may adjourn the said court from day to day for three days successively, and if a quorum shall not attend on the fourth, or having attended one day shall fail to attend on a subsequent day

No discontinuance though the judges fail to attend.

Court may be adjourned for three days and by whom.

1796.

Executions
how to issue.

of a session, the court shall stand adjourned till the court in course.

SEC. 9. Executions shall be issued from the court of appeals according to law; and the return days shall be appointed by the said court.

Power of the
court as to pro-
cess.

SEC. 10. The court of appeals shall have power to direct the writs, summonses, process, forms and modes of proceedings to be issued, observed and pursued, by the said court of appeals.

Jurisdiction.

SEC. 11. In cases in which the inferior courts have cognizance, also in such cases as shall be brought before the court of appeals by appeal or writ of error, or other proper mode, to reverse decrees or judgments for the supreme court for the district of Kentucky, the court of appeals shall have appellate jurisdiction, under the regulations respecting appeals and writs of error, hereinafter mentioned.

Appellate jurif-
diction in cer-
tain cases,

SEC. 12. The court of appeals shall have appellate jurisdiction in all cases whereon appeals to reverse decrees and judgments of the said supreme court for the district of Kentucky, have been made to and were depending on the first day of June, 1792, in the court of appeals for the state of Virginia: *Provided*, that the party prosecuting such appeal shall lodge an authenticated copy of the record, in which the decree or judgment appealed from was entered in the clerk's office of the court of appeals, before the expiration of the second term of the said court; and the bonds given for the prosecution of the said appeals, shall continue and be of the same force as if the said appeal had been determined in the court of appeals for the state of Virginia.

Rules in ap-
peals and writs
of error.

SEC. 13. In appeals and writs of error, the following rules shall be observed: No appeal shall be granted from the judgment or decree of an inferior court, to the court of appeals, unless such judgment or decree be final, and amounts, exclusive of costs, to thirty pounds, or relate to a franchise or freehold. Every appeal shall be prayed at the time of rendering the judgment, sentence or decree.

Not to be grant-
ed before final
judgment.Appellant to
give bond, &c.

The person appealing shall, by himself, or a responsible person on his behalf, in the office of the clerk of the court from whence the appeal is prayed, give bond and sufficient security to be approved by the court and within a time to be fixed by the court to the appellee for the due

V. YEAR OF THE COMMONWEALTH.

563

prosecution of his appeal. The penalty of the said bond shall be in a reasonable sum in the direction of the court. It shall be the duty of the appellant to lodge an authenticated copy of the record before the expiration of the second term, after the appeal shall be entered in the clerk's office of the court of appeals; or else it shall stand dismissed unless further time shall be granted by the court before the end of such second term for lodging the same.

1796

To lodge a copy of the record and when.

The plaintiff in error, except in cases of wills, mills and roads, shall assign error upon matters of law only arising on the face of the proceedings.

Where the plaintiff may assign errors in law.

In case of mills, wills and roads, the plaintiff in error may assign errors upon matters of fact, as well as upon matters of law.

In fact.

If the judgment or decree be affirmed in the whole, the appellant shall pay to the appellee ten per centum on the sum due thereby; beside the costs upon the original suit and appeal.

Damages on affirmation.

If the judgment or decree shall be reversed in the whole, the appellee shall pay to the appellant such costs as the court in their discretion may award.

Costs upon reversal.

Where the judgment or decree shall be reversed in part, and affirmed in part, the costs of the original suit and appeal shall be apportioned between the appellant and appellee in the discretion of the court. The court of appeals shall, in case of a partial reversal, give such judgment or decree as the inferior court ought to have given.

What judgment, court to give.

On appeals or writs of error, it shall be lawful for the court of appeals to issue execution or remit the cause to the inferior court, in order that an execution may be there issued, or that other proceedings may be had thereupon.

May issue execution or remand the suit.

Writs of error shall, upon the demand of the person applying for the same, be issued as a matter of right, except in those cases which may be brought before and determined by the district courts, under the criminal jurisdiction of the said court, in which cases no *certiorari*, appeal, *supersedeas* or writ of error, shall be allowed.

Writs of error matter of right.

No writ of error shall be a *supersedeas*, unless the court of appeals, or some judge thereof in vacation, as the case may be, after inspecting a copy of the record, and being opinion that there is sufficient error therein for reversing

In what cases to operate as a *supersedeas*.

1796.



the judgment in whole or in part, shall certify the same; in which case the clerk issuing the said writ, shall endorse on the said writ of error, "that it shall be a *supersedeas*, and it shall be obeyed as such accordingly." And it shall also be necessary before a writ of error shall operate as a *supersedeas*, that bond to be approved by the clerk of the court issuing the said writ, shall be given in the same manner under the like penalty. And the plaintiff in error shall lodge an authenticated copy of the record under the same regulations, and the parties in error shall be subject to the same judgment and mode of execution as is already directed in the case of appeals.

Limitations as
to writs of error

A writ of error shall not be brought after the expiration of five years from the passing the judgment complained of, except in cases of writs of error to reverse judgments or decrees of the supreme court for the district of Kentucky, which may be brought at anytime before the first day of June, one thousand seven hundred and ninety-seven, and not afterwards; but where a person thinking himself aggrieved by any decree or judgment which may be reversed in the court of appeals, shall be an infant, *feme covert*, *non compos mentis*, or imprisoned when the same was passed, the time of such disability shall be excluded from the computation of the said five years.

When court is
divided judgment
affirmed.

Whensoever the court of appeals shall be divided in opinion, on hearing any appeal or writ of error, the judgment or decree appealed from shall be affirmed.

Duty of the
clerk.

SEC. 14. The clerk of the court of appeals shall carefully preserve the transcript of records certified to his court, with the bonds for prosecution, and all papers relating to them, and other suits depending therein, docketing them in the order he shall receive them that they may be heard in the same course, unless the court for good cause to them shewn, direct any to be heard, out of its term.

To draw up the
proceedings of
each day.

The proceedings of every day during a term, shall be drawn at full length by the clerk against the next sitting of the court; and such corrections as are necessary being first made therein, they shall be signed by the presiding judge.

To make com-
plete records.

When any cause shall be finally determined, the clerk shall make a compleat record thereof; and all writs, processes and summonses, issuing from the court of ap-

peals, shall be signed by the clerk of the same, and shall bear teste in the name of the chief justice for the time being.

1796.

SEC. 15. The court of appeals shall have power to impose and administer all necessary oaths and affirmations, to punish by fines and imprisonment all contempts of authority in any cause or examination before the said court, and establish rules in conformity with the constitution and laws of this commonwealth.

Power to administer oaths, & punish contempts.

And establish rules, &c.

SEC. 16. For good cause the court of appeals, or any judge thereof, may grant commissions for the examination of witnesses, and the clerk of the said court, when any witness is about to depart from the state, or shall by age, sickness or otherwise, be unable to attend the court, or where the claim or defence of any party, or a material part thereof shall depend on a single witness, may, upon affidavit thereof, issue a commission for taking the deposition of such witness *de bene esse*, to be read as evidence at the trial in case the witness be then unable to attend; but the party obtaining such commission shall give reasonable notice to the other party of the time and place of taking the deposition.

May grant commissions to take depositions in certain cases.

SEC. 17. In the court of appeals the parties may plead and manage their own causes personally, or by their attorney in fact, properly authorised for that purpose by letters of attorney, or by such attorneys at law as by the rules of the said court shall be permitted to manage and conduct causes therein.

Parties may appeal in person or by attorney.

SEC. 18. Deeds, powers of attorney or other writings, may be admitted to record in the clerk's office of the court of appeals, he taking the acknowledgment or proof in the same manner as if it was done in open court.

Deeds, &c. may be admitted to record and how

CHAPTER CCLXXVIII.

An ACT to reduce into one the several acts or parts of acts for regulating Conveyances.

Approved December 19, 1796.

Part of an act of 1748 must be taken into view in construing this law :

(" An act for settling the titles and bounds of Lands, and for preventing unlawful hunting and ranging.")

" 1. Be it enacted by the lieutenant governor, council, and burgesses, of this present general assembly, and it is hereby enacted, by the authority of the same, That no lands, tenements, or hereditaments, within this colony, shall pass, alter, or

Acts of 1748, chap. 1.

1796

change, from one to another, whereby an estate of inheritance in fee simple, fee taille, general or special, or any estate for life or lives, or any greater or higher estate, shall be made or take effect, in any person or persons, or any use thereof to be made, by bargain and sale, lease and release, deed of settlement to uses of feoffment, or other instrument, unless the same be made by writing, indented, sealed and recorded, in the records of the general court, or of that county court where the land mentioned to be passed or granted shall lie, in manner following, that is to say : If the person or persons who shall make and seal such instrument of writing shall be resident within this colony at the time of making and sealing the same, then the recording thereof shall be within eight months from the sealing and delivery ; and if the person or persons so making and sealing shall be resident in any other place than within this colony at the time aforesaid, then the recording shall be within two years from the sealing and delivery. But no such deed or conveyance whatsoever of lands, tenements or hereditaments, shall be admitted to record in the general court, or in any county court, unless the same be acknowledged in such court by the grantor or grantors thereof in person, or by some or one of them, to be his, her or their proper act and deed ; or else that proof thereof be made in open court, by the oath of three witnesses at the least.

" II. And that when any such deeds or conveyances shall be acknowledged or proved in court, in order to their being recorded, the livery of seisin thereupon made, in such cases where the same is by law required, shall in like manner be acknowledged or proved, and shall be recorded together with the deed or conveyance whereupon it shall be made."

It would seem from this act that the acknowledgment or proof and recording, was essential to passing the right as between grantor and grantee, and that nothing under the name of an equivalent act, would be received in lieu of the personal acknowledgment or proof by this law required. Query—Could the acknowledgment be made by an attorney in fact, so as to comply with this provision ?

In 1776, an act was passed " to enable persons living in other countries to dispose of their estates in this commonwealth with more ease and convenience." All the provisions of that act are incorporated in the present, except the 7th and 8th sections which have been strangely overlooked by the legislature, the bar and the bench of Kentucky—they are as follows :

*Acts of 1776,
chap. 16.*

" VII. And whereas several persons have purchased lands in this commonwealth, from commissioners and sheriffs who sold the same under decrees and judgments of the courts of this commonwealth whilst it was the colony of Virginia, which purchasers, notwithstanding they have conveyances from such commissioners and sheriffs, have only an equitable title to such lands, which in many instances may prejudice the interest of such purchasers, and those claiming under them :

" VIII. Be it further enacted, by the authority aforesaid, That all conveyances of commissioners and sheriffs heretofore made for lands sold in virtue of any decree or judgment of any court within this commonwealth, as aforesaid, and all such conveyances which shall hereafter be made, shall be, and they are hereby declared to be good and effectual for passing the absolute title of such lands to the purchasers thereof, and all persons claiming under them, any law to the contrary notwithstanding : saving to the commonwealth, and to all and every other person and persons, bodies politic and corporate, their respective heirs and successors, other than the parties to such conveyances, decrees or judgments, and those claiming under them, all such right, title, interest and demand, as they, every or any of them, would have had in case this act had not been made."

In 1785, an act was passed " for regulating conveyances."—In this the phraseology of the act of 1748, is varied by the introduction of the following words : " nor shall such conveyance be good against a purchaser for valuable consideration, not having notice thereof on any creditor." The reader will see that these words are retained in the present act. As much of the present act as

goes to abolish estates tail, depends on a little act of 1776, re-enacted and made plainer by the abovementioned act of 1785.

The laws respecting recording deeds which relate peculiarly to Kentucky, are as follows—The act of 1782, “establishing a district court on the western waters,” had the following provision, “The said court may admit deeds to record within the time limited by law, either upon proof or acknowledgment thereof before such court.” At the October session of 1784, the following provision was made, chapter 60, sec. 6—

1796.

“VI. *And be it further enacted*, That memorials of all bargains, sales, mortgages, and other conveyances, marriage settlements, and deeds of trust, and also lists of certificates for obtaining probat or administration, be hereafter transmitted by the clerks of the several county courts within the district of Kentucky to the clerk of the said district, and by the clerks of the other county courts within this commonwealth to the clerk of the general court, in the manner and at the time the same are directed by law to be returned to the secretary's office; and the clerks of the district court of Kentucky, and of the general court, shall register such memorials and cause the said lists returned to them as aforesaid, to be recorded as heretofore directed by law, in books to be kept for those purposes; and that for recording the memorial of each bargain, sale, mortgage or other conveyance, marriage settlement or deed of trust, there be paid by the person to whom the same shall be made, ten pounds of tobacco, and also ten pounds of tobacco for recording each probat or certificate of administration, to be collected, levied, and accounted for, in the same manner as other clerks fees are directed by law to be collected, levied, and accounted for.”

By the district court law of 1795, chap. 201, sec. 29, it was declared that “all deeds and other writings may be recorded in the office of any district court, provided if the same be for the conveyance of land, that the lands conveyed, lie within the said district. And if the lands conveyed by one deed, shall lie in part of two districts, the said deed may be recorded in the office of the court of appeals. And it shall be the duty of the clerks of the district courts, and court of appeals, in the cases beforementioned, to receive the said deeds in their offices out of court, and record the same, taking the acknowledgment and proof of execution as is directed by law.”

In the county court law of the same session, chap. 221, the following provision was made—

“Sec. 4. *And be it further enacted*, That deeds, powers of attorney and other writings may be admitted to record in the clerk's office of the court of appeals, he taking the acknowledgment or proof, in the same manner as if it was done in open court.”

By the circuit court laws of 1802, deeds were permitted to be recorded in the offices of the circuit court and present general court, (Vol. III. chap. 43)—But by an act passed in 1806, (Vol. III. chap. 371) they can no longer be recorded in the circuit courts.

SECTION 1. *BE it enacted by the general assembly*, That no estate of inheritance or freehold, or for a term of more than five years, in lands or tenements, shall be conveyed from one to another, unless the conveyance be declared by writing, sealed and delivered, nor shall such conveyance be good against a purchaser for a valuable consideration, not having notice thereof, or any creditor, unless the same writing be acknowledged by the party or parties who shall have sealed and delivered it, or be proved by three witnesses to be his, her or their act in

What conveyance sufficient to pass an estate of inheritance, &c.

1796.

the office of the clerk of the court of appeals, of a district court, or in a court of quarter sessions, or county court, in the manner prescribed by law, or in the manner hereinafter directed, within eight months after the time of sealing and delivering, and be lodged with the clerk of such court to be there recorded.

Covenants in consideration of marriage when good against creditors, &c.

Of lands.

Of personal estate.

SEC. 2. No covenant or agreement made in consideration of marriage, shall be good against a purchaser for valuable consideration, not having notice thereof, or any creditor, unless the same covenant or agreement be acknowledged by the party bound thereby, or be proved by three witnesses to be his, her or their act; if land be charged, in the office of the clerk of the court of appeals, or of a district court, or before the court of quarter sessions, or county court of that county in which the land or part thereof lieth; or if personal estate only be settled or covenanted, or agreed to be paid or settled, before the court of quarter sessions or county court of that county in which such party shall dwell, or in the manner hereinafter directed, within eight months after the covenant or agreement made, and be lodged with the clerk of such court to be there recorded.

Conveyances by non-residents.

SEC. 3. If the party who shall sign and seal any such writing, reside not in this commonwealth, the acknowledgment by such party or the proof by the number of witnesses requisite, of the sealing and delivering of the writing before any court of law, or the mayor or other chief magistrate of any city, town, or corporation of the county in which the party shall dwell, certified by such court, or mayor, or chief magistrate, in the manner such acts are usually authenticated by them, and offered to the proper court to be recorded within eight months after the sealing and delivering, shall be as effectual as if it had been in the last mentioned court.

Conveyances by husband and wife, how to be executed, &c.

SEC. 4. When husband and wife shall have sealed, and delivered a writing, purporting to be a conveyance of any estate or interest, if she appear in court, and being examined privily and apart from her husband by one of the justices thereof, shall declare to him that she did freely and willingly seal and deliver the said writing, "to be then shewn and explained to her," and wishes not to retract it, and shall before the said court acknowledge the said writing again shewn to her to be her act; or if before two justices of the peace of that county in which

she dwelleth, if her dwelling be within the United States of America, who may be empowered by commission to be issued by the clerk of the court wherein the writing ought to be recorded, to examine her privily, and take her acknowledgment: the wife being examined privily and apart from her husband by those commissioners, shall declare that she willingly signed and sealed the said writing "to be then shewn and explained to her by them," and consenteth that it may be recorded; and the said commissioners shall return with the said commission, and thereunto annexed a certificate under their hands and seals, of such privy examination by them, and of such declaration made, and consent yielded by her; in either case the said writing acknowledged also by the husband or proved by witnesses, to be his act, and recorded together with such privy examination and acknowledgment before the court, or together with such commission and certificate, shall not only be sufficient to convey or release any right of dower thereby intended to be conveyed or released, but be as effectual for every other purpose as if she were an unmarried woman.

1796.

Commission to
take privy ex-
amination
of
wife if in U.S.

SEC. 5. If the dwelling of the wife be not in the United States of America, the commission to examine her privily and take her acknowledgment, shall be directed to any two judges or justices of any court of law, or to the mayor or other chief magistrate of any city, town or corporation of the county in which the wife shall dwell, and may be executed by them in the same manner as a commission directed to two justices in the United States of America; and the certificate of the judges or justices of such court, or the certificate of such mayor or chief magistrate, authenticated in the form and with the solemnity by them used in other acts, shall be as effectual as the like certificate of the justices in the United States of America.

If out of the
U. S.

SEC. 6. Where any person is about to convey a tract of land, and resides in any other county than that in which the land doth lie, it shall and may be lawful for such person and his wife (if he has any) to acknowledge and subscribe a deed for the same in the presence of two justices of the peace in the county where they reside; and such justices having previously examined the wife apart from her husband, whether she with her own free will and consent, relinquished her right of dower in such

Conveyances
of lands lying
in another coun-
ty.

1796.

Clerk's fee.

Conveyance of
lands by parties
residing in any
other state.Powers of at-
torney how to
be acknowled-
ged and record-
ed.

lands, shall certify the same on the deed under their hands ; and a copy of such deed shall be recorded in the court of the county within four months ; and the clerk shall certify on the original deed that a true copy thereof hath been recorded in his office ; and such deed shall, within eight months thereafter, be recorded in the court of the county in which the land shall lie, which shall be as lawful as if the said deed had been acknowledged or proved by the parties in open court ; and the clerk for recording a copy and a certificate on the original deed, may demand and receive six shillings, to be paid by the party or parties acknowledging the same, and to be collected as his other fees are by law paid and collected, but shall not receive the tax on such copy.

SEC. 7. *Be it further enacted*, That where the parties reside in any other state, and are about to convey any land lying within this commonwealth, it shall be lawful for them to proceed in like manner, except that a copy need not be recorded in the county where the parties reside ; but the clerk of the county shall certify on the original deed that the persons before whom such deed was acknowledged were justices of the peace, and that due faith and credit is to be given to any act done by them, when acting in their official character ; and the seal of the county shall be affixed to such certificate, and such deed certified as aforesaid, shall be admitted to record within any county in this state where the land may lie, and shall be deemed as lawful as if the same had been acknowledged by the parties or proved in open court.

Any person or persons about to give a power of attorney to another, residing in any other county within this state, may acknowledge the same in the court of the county where the person about to acknowledge the same may reside, and a copy of such shall be certified by the clerk, that it hath been recorded in his office, and acknowledged in open court ; and a copy so certified being produced to the clerk of the court where the person resides to whom the power is made, and in which the business is to be done, shall be admitted to record in his office ; and such power shall be deemed sufficient. Where the person or persons making such power of attorney resides in any other state, he or they shall proceed as is above required, except that the clerk certifying the copy shall affix the state or county seal ; and such copy shall be re-

corded in some court within this state. And as in many instances deeds have been recorded where the wife has not relinquished her right of dower, owing to the great inconveniency attending it; wherefore,

SEC. 8. *Be it enacted*, That it shall and may be lawful in such cases where deeds have been recorded, and the *feme covert* hath not relinquished her right of dower in the same, for her to relinquish her right to the lands so deeded before two justices of the peace in the county, and such justices having previously examined her as is before directed, shall certify the same under their hands; which certificate shall be recorded in the court where the deed or deeds may have been recorded, which shall be deemed sufficient. And in all cases where a deed is made by the parties residing in the county where the land may lie, it shall be lawful for the *feme covert* to relinquish her right of dower in like manner; and the clerk may demand and receive one shilling and three-pence for recording every such certificate; but nothing in the three last clauses shall be so construed as to prevent the parties making the deed or deeds, from acknowledging the same in the manner before directed in this law, or in any wise to repeal the foregoing sections.

SEC. 9. The clerk of every court shall record all writings acknowledged or proved before such court, or in the clerk's office of such court, as the case may be, or certified to have been acknowledged or proved in manner before prescribed, together with the commissions for privily examining and taking the acknowledgments of married women, and all endorsements on such writings and plots, and schedules, and other papers thereto annexed, by entering them word for word in well bound books to be carefully preserved, and afterwards re-deliver them to the parties entitled to them; and shall moreover make a docket of all such writings, containing the dates thereof, and of the acknowledgments and probates, the names, surnames, and additions of the parties thereto in alphabetical order, and the quantities and situations of land, numbers and names of slaves, and descriptions of personal estate conveyed thereby.

SEC. 10. Every estate in lands or slaves, which on the seventh day of October, in the year of our lord one thousand seven hundred and seventy-six, was an estate in fee-tail, shall be deemed from that time to have been,

1796.

How feme covert may relinquish her right of dower,

Clerk's fee.

Duty of clerks in recording writings, &c.

Estates tail changed into estates in fee-simple.

1796.

and from thenceforth to continue an estate in fee-simple; and every estate in lands which since hath been limited, or hereafter shall be limited, so that as the law aforetime was, such estate would have been an estate in tail, shall also be deemed to have been, and continue an estate in fee-simple. And all estates which before the said seventh day of October, in the year one thousand seven hundred and seventy-six, by the law, if it remained unaltered, would have been estates in fee-tail, and which now by virtue of this act are, and will be estates in fee-simple, and shall from that time henceforth, be discharged of the condition annexed thereto, by the common law, restraining alienations before the donee shall have issue; so that the donees, or persons in whom the conditional fee is vested, or shall vest, had, and shall have the same power over the same estates, as if they were pure and absolute fees.

Construction of
grants, devises,
&c.

Contingent re-
mainder.

SEC. 11. Every estate in lands which shall hereafter be granted, conveyed or devised to one, although other words heretofore necessary to transfer an estate of inheritance, be not added, shall be deemed a fee-simple, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised by construction or operation of law. Where an estate hath been or shall be by any conveyance limited in remainder to the son or daughter, or to the use of the son or daughter of any person to be begotten, such son or daughter born after the decease of his or her father, shall take the estate in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death.

In deeds of
bargain & sales,
&c. the posses-
sion declared to
be in the bar-
gainee, &c.

SEC. 12. By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to use or deed, operating by way of covenant, to stand seized to use, the possession of the bargainor, releasor or covenantor, shall be deemed heretofore to have been, and hereafter to be transferred to the bargainee, releasee, or person entitled to the use for the estate or interest which such person hath, or shall have in the use as perfectly as if such bargainee, releasee, or person entitled to the use, had been enfeoffed with livery of seisin of the land intended to be conveyed by the said deed or covenant.

SEC. 13. Estates of every kind holden or possessed

in trust, shall be subject to like debts and charges of the persons, to whose use, or for whose benefit they were, or shall be, respectively holden or possessed, as they would have been subject to, if those persons had owned the like interest in the things holden or possessed as they own or shall own in the uses or trusts thereof.

1796.

Lands held in trust liable to debts of him to whose use they are holden.

SEC. 14. Where any person, to whose use, or in trust, for whose benefit another is, or shall be seized of lands, tenements or hereditaments hath or shall have such inheritance in the use or trust, as that if it had been a legal right, the husband or wife of such person would thereof have been entitled to curtesy or dower, such husband or wife shall have and hold, and may by the remedy proper in similar cases, recover curtesy or dower of such lands, tenements or hereditaments.

And to dower & curtesy.

SEC. 15. Grants or rents, or reversions, or remainders, shall be good and effectual without attornments of the tenants; but no tenants who before notice of the grant, shall have paid the rent to the grantor, shall suffer any damages thereby.

Attornments not necessary.

SEC. 16. The attornment of a tenant to any stranger shall be void, unless it be with the consent of the landlord of such tenant, or pursuant to, or in consequence of the judgment of a court of law, or the order or decree of a court of equity.

To a stranger void.

CHAPTER CCLXXIX.

An ACT to amend and reduce into one the several acts regulating the Town of Lexington, and for other purposes.

Approved December 19, 1796.

SECTION 1. *BE it enacted by the general assembly,* That it shall and may be lawful for the freeholders, housekeepers, and free male inhabitants of the town of Lexington, in the county of Fayette, and those within one mile of the court-house of the said town, other than free negroes and mulattoes, who have resided therein for the space of six months, and who possess in their own right within the said town and limits aforesaid, property of the value of twenty-five pounds, to elect and chuse annually on the first Saturday in January, seven trustees; which election shall be conducted by one of the late or

Seven trustees to be annually elected.

How to conduct election.

1796.

then acting trustees, to be appointed by the board for that purpose, and held at the court-house ; ten days previous notice thereof shall be advertised in the most public places in the said town by the chairman of the late or then acting trustees ; and the return of the persons so elected shall be made to the clerk of the said board, which shall be recorded in their books.

Who may be
a trustee.

SEC. 2. No person shall be capable of being elected, or of acting as trustee, who is not a freeholder or inhabitant of the said town or the limits aforesaid ; nor shall any inhabitant of the said town or limits aforesaid, be capable of being appointed, or of acting as a surveyor of any road without the said town or limits aforesaid.

Vacancies how
filled.

SEC. 3. Vacancies occasioned by death, disqualification or otherwise, shall be supplied by elections to be made in manner herein before directed, on a day to be appointed by the remaining trustees, and return thereof made in manner herein directed before.

Powers of the
trustees.

SEC. 4. The said trustees and their successors, or a majority of them, shall have power to erect a market-house or market-houses in the said town, to appoint a clerk of the market, and prescribe his duties, to regulate and repair the streets and highways in the said town, to make provision for the collecting and accounting for the taxes they are empowered by this act to levy, by appointing a collector, and directing distress to be made for delinquencies, or by any other ways and means, and to make such ordinances and regulations not contrary to the laws and constitution of this commonwealth, as shall by a majority of them be thought necessary for carrying this act into effect, and affix a penalty for the breach of any of the said bye-laws, not exceeding the sum of ten dollars, to be recovered at the suit of the trustees in the same manner as sums of the like amount are now recoverable by law ; *Provided always*, that before any bye-law or ordinance enacted by the trustees of the said town shall have any operation, it shall be advertised for two weeks successively in the Kentucky Gazette or Kentucky Herald.

Proviso.

Further powers

SEC. 5. The said trustees shall have power to impose taxes not exceeding one hundred pounds annually on the titheables and property real and personal within the said town and the limits thereof ; and the sum of fifty pounds annually on the titheables and property real and personal

within the bounds of the in and out-lots of the said town ; which last mentioned sum shall be appropriated to the maintaining a watch in the said town.

1796.

SEC. 6. Whosoever shall erect any nuisance within the limits of the said town, or shall cause any obstructions in the streets or highways of the same, shall forfeit and pay the sum of three dollars.

Penalty on nuisances.

SEC. 7. Whosoever shall be guilty of running or racing horses in the streets or highways within the limits of the said town, shall forfeit and pay the sum of three dollars. If the trustees of the said town shall appropriate two acres of land in some convenient place within the limits of the same for the purpose of shewing stud-horses, and shall give public notice thereof by publishing the same for two weeks successively in the Kentucky Gazette or Kentucky Herald ; no person shall thereafter shew any stud-horse in the streets or highways of the said town, on pain of forfeiting and paying the sum of three dollars : the forfeitures accruing by virtue of this act, shall be sued for in the name of the trustees of the said town, and recoverable in the manner sums of the like amount are now recoverable by law. All sums of money recovered by virtue of this act, shall be paid to the said trustees, or to any person empowered by them to receive the same, and shall be by them appropriated to the purpose of clearing and keeping in repair the streets and highways of the said town.

For racing.

For shewing stud-horses in the streets.

How recovered & appropriated.

SEC. 8. *Be it enacted*, That from and after the first day of March next, it shall not be lawful for any person or persons residing within the bounds of the in and out-lots of the town of Lexington owners of any swine, to suffer the same to go at large within the said bounds ; and if any such swine shall be found running or going at large within the same, it shall be lawful for the said trustees, or any person appointed by them, to take up and sell all such swine so running at large ; and the said trustees shall appropriate the proceeds of such sale to the repairing the streets and highways of the said town : *Provided always*, That the provisions in this act contained, shall not extend to persons driving swine from one plantation to another through the said town and bounds aforesaid, or in order to sell the same ; and if any swine not the property of an inhabitant of the said town, shall be taken up and sold by virtue of this act, the said trus-

Swine not to go at large.

Provido.

1796

Weights and
measures.

tees, upon proof thereof being made, shall pay to the owner of such swine the price for which the same was sold.

SEC. 9. The standard of weights and measures shall be the same as it now is by the laws of Virginia, until altered by the United States: and if any person in the market-house of the said town shall sell, or offer to sell any article by weight or measure below the standard, it shall be lawful for the clerk of such market to seize the article so sold, or offered for sale, and to sell the same; and the said clerk shall account for the amount of the sale to the trustees, whose duty it shall be to apply the same to the repairing the streets and highways of the said town.

May employ
watchmen.

SEC. 10. *And be it further enacted,* That it shall and may be lawful for the said trustees to employ such number of watchmen at such reasonable wages as shall be found necessary and proper; and that they shall have full power and authority to ascertain and prescribe the stands and rounds of the said watchmen in and through the streets and highways of the said town; to engage them for such length of time as shall be found expedient; and in case of misbehaviour, inability, or neglect, to discharge them and appoint others in their stead; and the said watchmen shall respectively use their best endeavors to prevent fires, murders, burglaries, robberies and other outrages and disorders within the bounds of the in and out-lots of the said town: they shall visit all negro quarters, and other places suspected of entertaining unlawful assemblies of slaves, or other disorderly persons; and they are hereby empowered and required to arrest and apprehend them and all such suspicious persons who shall be found wandering or misbehaving themselves within the bounds aforesaid; and shall take the person or persons so apprehended as soon as conveniently may be, before some justice of the peace of the county of Fayette, to be examined and dealt with according to law.

Their duties.

Jurisdiction of
the trustees.

SEC. 11. The jurisdiction of the trustees over the streets and highways shall extend no further than the bounds of the out-lots; beyond those bounds shall be as heretofore under the direction of the surveyors appointed by the county court; and the titheables of the said town shall be compellable to work on such parts of the roads as lie between the bounds of the out-lots and the end of one mile from the court-house.

V. YEAR OF THE COMMONWEALTH.

577

SEC. 12. Whereas it is represented to this general assembly, that in consequence of the act of last session of the general assembly, entitled "an act authorising a lottery for raising a sum of money, to be applied to the use of the Lexington lodge of ancient free-masons, No. 25," Hugh M'Ilvain, James Morrison, Robert Patterson, George Tegarden, Alex. Parker, Thomas January and James Hughes, trustees of the town of Lexington for the present year, did form a scheme of chances of insurance on the said lottery, to raise a sum of money for paving and repairing the streets of the said town, and building bridges. And whereas they have issued chances of the same numbers to the same amount, and at the same price as the tickets in the lodge lottery, and have bound themselves to pay to the holders of such chances such prizes as the holders of the tickets of the same numbers shall be entitled to by virtue of the aforesaid act, and the drawing of the said lottery; and whereas the said lodge lottery is not yet drawn, and the said trustees are willing to draw their chances if authorized by law;

1796.

SEC. 13. *Be it enacted by the general assembly,* That it shall and may be lawful for the said Hugh M'Ilvain, James Morrison, Robert Patterson, George Tegarden, Alex. Parker, Thomas January and James Hughes, or the major part of them, to draw the said chances of insurance; and the holders of the said chances of insurance shall be entitled to such prize or prizes as the number of the said chances will entitle them to, by the drawing, in the same manner as they would have been if the said lodge lottery had been drawn.

Managers of chances of insurance lottery may draw.

SEC. 14. All bonds entered into for the sales of such chances of insurance, shall be binding on the obligor or obligors; and the said Hugh M'Ilvain, James Morrison, Robert Patterson, George Tegarden, Alex. Parker, Thomas January and James Hughes, and their heirs, executors and administrators, shall be chargeable and answerable for all prizes due by virtue of the said chances of insurance to the holders thereof.

Bonds given for tickets binding on the obligors & managers liable for prizes.

SEC. 15. Each and every of the drawers, examiners and clerk or clerks, and all others employed in the drawing of the said chances of insurance, shall, before they shall act as such, take an oath, well, fairly and impartially, to act in their several employments; which oath any

Regulations for drawing.

1796. justice of the peace is hereby empowered and requested to administer.

SEC. 16. *And be it further enacted*, That the drawing of the said lottery shall not proceed except two of the justices of the peace of the county of Fayette shall be present, whose duty it shall be to see that the drawing of the said chances of insurance is conducted fairly and without fraud.

Repeal of act
respecting swine
in Washington.

So much of any former act as relates to swine running at large in the town of Washington, in the county of Mason, shall be, and the same is hereby repealed.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCLXXX.

An ACT to reduce into one, the several acts or parts of acts concerning Sheriffs.

Approved December 19, 1796.

Vide the prelection to chap. 16.

An important provision of an act of 1772, which had been re-enacted in 1787 is however omitted—it is as follows, chap. XI. sec. 1. 1772—(session acts of 1787, chap. XL. sec. 14:—

“*An act to amend the act entitled an act prescribing the method of appointing sheriffs, and for limiting the time of their continuance in office, and directing their duty therein, and for other purposes.*”

“I. Whereas by the long continuance of, under sheriffs in office they gain an undue influence, and by that means are induced to commit many acts of oppression and injustice to his majesty's subjects: For prevention whereof,

Be it enacted and declared, by the governor, council, and burgesses of this present general assembly, and it is hereby enacted by the authority of the same, That no person whatever, shall be capable to serve or execute the office of under sheriff, or deputy sheriff of any county, for any longer time than two years successively, without the consent and approbation of the court of the said county; any law, custom or usage, to the contrary thereof in any wise, notwithstanding.”

The English statutes yet in force in Kentucky, contain provisions still more important:—

“By the 4 H. 4. c. 5. it is enacted, “That no sheriff shall let his bailiwick to farm to any man for the time that he occupieth such office.”

“But the principal statute relating to this matter is the 5 & 6 E. 6. c. 16. which is verbatim as follows—1. “For avoiding of corruption which may hereafter happen to be in the officers and ministers in those courts, places or rooms, wherein there is requisite to be had the true administration of justice, or services of trust, and to the intent that persons worthy and meet to be advanced to the place where justice is to be ministered, or any service of trust executed, shall hereafter be preferred to the same, and no other.”

“II. *Be it therefore enacted*, That if any person or persons at any time hereafter bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, or receive, have, or take any money, fee, reward, or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward or other profit, directly or indirectly, for any office or offices, or for the

V. YEAR OF THE COMMONWEALTH.

579

1796.

deputation of any office or offices, or any part of any of them; or to the intent that any person should have, exercise or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them, which office or offices, or any part or parcel of them, shall in anywise touch or concern the administration or execution of justice, or the receipt, controlment, or payment of any of the king's highness's treasure, money, rent, revenue, account, auditorship, or surveying of any of the king's majesty's honours, castles, manors, lands, tenement, woods or hereditaments, or any the king's majesty's customs, or any administration or necessary attendance to be had, done, or executed in any of the king's majesty's custom house or houses, or the keeping of any the king's majesty's towns, castles or fortresses, being used, occupied, or appointed for a place of strength and defence; or which shall concern or touch any clerkship to be occupied in any manner of court of record wherein justice is to ministered; that then all and every such person and persons, that shall so bargain or sell any of the said office or offices, deputation or deputations, or that shall take any money, fee, reward, or profit, for any of the said office or offices, deputation or deputations, of any of the said offices, or any part of any of them, or that shall take any promise, covenant, bond, or assurance for any money, reward, or profit, to be given for any of the said office or offices, deputation or deputations of any of the said office or offices, or any part of any of them, shall not only lose and forfeit all his and their right, interest and estate, which such person or persons shall then have of, in, or to any of the said office or offices, deputation or deputations, or any part of any of them, or of, in, or to the gift or nomination of any the said office or offices, deputation or deputations, for the which office or offices, or for the deputation or deputations, of which office or offices, or for any part of any of them, any such person or persons shall so make any bargain or sale, or take or receive any sum of money, fee, reward or profit, or any promise, covenant, bond, or assurance to have or receive any reward, money or profit; but also that all and every such person or persons that shall give or pay any sum of money, reward, or fee, or shall make any promise, agreement, bond or assurance, for any of the said offices, or for the deputation or deputations of any the said office or offices, or any part of any of them, shall immediately, by and upon the same fee, money, or reward given or paid, or upon any such promise, covenant, bond, or agreement had or made for any fee, sum of money, or reward, to be paid as is aforesaid, be adjudged a disabled person in the law to all intents and purposes to have, occupy, or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee, or reward, or make any promise, covenant, bond, or other assurance to give or pay any sum of money, fee or reward.

"III. It is further enacted, that all and every such bargains, sales, promises, bonds, agreements, covenants, and assurances, as be before specified, shall be void to and against him and them by whom any such bargain, sale, bond, promise, covenant, or assurance shall be had or made.

"IV. Provided always, that this act, or any thing therein contained, shall not in anywise extend to any office or offices whereof any person or persons is, are, or shall be seized of any estate of inheritance; nor to any office or parkership, or of the keeping of any park-house, manor, garden, chase, or forest, or to any of them; any thing in this act heretofore mentioned to the contrary thereof in anywise notwithstanding.

"V. Provided also, that if any person or persons do hereafter offend in any thing contrary to the tenor and effect of this act, yet notwithstanding, all judgments given, and all other act or acts, executed or done, by any such person or persons so offending by authority or color of the office or deputation, which ought to be forfeited, or not occupied, or not enjoyed, by the person so offending, as is aforesaid, after the said offence so by such person so committed or done, and before such person so offending for the same offence be removed from the exercise, administration, and occupation of the said office or deputation,

1796.

shall be and remain good and sufficient in law to all intents, constructions, and purposes, in such like manner and form as the same should or ought to have remained and been, if this act had never been had or made.

"Provided also, that this act shall not extend to be prejudicial or hurtful to any of the chief justices of the kings courts, commonly called the King's Bench, or Common Pleas, or to any of the justices of assize that now be, or hereafter shall be; but that they and every of them may do in every behalf, touching or concerning any office or offices to be given or granted by them or any of them, as they or any of them might have done before the making of this act; any thing above mentioned to the contrary in anywise notwithstanding."

Governor to fill
vacancy in of-
fice:

SECTION 1. *BE it enacted by the general assembly,* That if any county shall neglect to elect a person to fill the office of sheriff, or if the person elected shall die, or the said office become vacant by any other means within the time pointed out by the constitution, the governor shall, by and with the advice and consent of the senate during their session, or in the recess agreeably to the constitution, appoint some other qualified person to fill up the vacancy: and where any new county shall have

and in new
counties laid off
after a general
election.

been or may hereafter be laid off, after the general elections for sheriffs and coroners shall have taken place, the governor shall, by and with the advice and consent of the senate during their session, appoint some qualified person to act as sheriff and coroner in said county or counties, until the next election. Every person so elected or appointed sheriff, and refusing to accept and execute the office, shall forfeit sixty dollars to the use of the county towards lessening the levy; for which penalty, judgment may be entered by the court on the refusal of the person (to accept) being made in court, otherwise the same may be recovered by information exhibited against the person refusing, and on his conviction as in other cases: but if the person refusing shall make oath in court that he hath used his best endeavors truly and

Penalty on the-
rself for refusing
to act.

bona fide, without covin or collusion, to get security for performing the said office, and cannot obtain such security, he shall thereupon be exempted from the penalty, and a new commission shall be issued as in case of vacancy by death. Every person accepting a sheriff's com-

How recovery-
the

mission, shall, in his county court, enter into two bonds with good and sufficient securities, one in the penalty of three thousand dollars, with the following condition, to wit: "The condition of the above obligation is such, that if the above bound A. B. as sheriff of the county of

Not liable if
they cannot
procure securi-
ty.

shall, by himself or his deputies, well and truly collect all officers' fees and dues put into his or

Every sheriff to
give two bonds
with security.

Condition of
the first.

shall, by himself or his deputies, well and truly collect all officers' fees and dues put into his or

their hands to collect, and account for and pay the same at such time and in such manner as is directed by law ; shall also well and truly execute, and due return make of all process and precepts to him directed, and to him or them delivered ; and pay and satisfy all sums of money or tobacco by him or them received, or which ought to have been received upon any such process or precept to the person or persons entitled thereto ; and in all other things shall truly and faithfully execute and perform the said office of sheriff according to law, during the time of his continuance therein, then the above obligation to be void, otherwise to remain in full force ;" which bond shall be payable to the governor for the time being and his successors ; and in his name or that of his successor, any person injured by a breach of the condition, may at his cost prosecute a suit thereon, and recover damages, and be liable to pay costs to the defendant if a verdict or judgment pass in his favor, or the suit be discontinued ; and such bond shall not become void upon the first recovery or dismissal of a first or other suit ; but may be put in suit from time to time, by and at the cost of any other person injured until the whole penalty be recovered in such damages. The other bond shall also be payable to the governor and his successors, in such penalty as the court shall direct, at least double the amount of the taxes to be levied in such county for that year, and with the following condition, to wit : " The condition of the above obligation is such, that if the above bound sheriff of the county of shall, by himself or deputies, well and truly collect all taxes and duties directed by law to be collected in the said county during the time of his continuance in office ; also all fines, amercements and penalties, which he shall be authorized to collect, and account for and pay the same to the public treasurer, and other persons entitled thereto, at such time and in such manner as is directed by law ; then the above obligation to be void, otherwise to remain in full force." For breach of the condition of which bond at the instance and cost, and for the benefit of any person injured thereby, a suit may be commenced and prosecuted in the same manner and subject to the same regulations as the action on the first mentioned bond, or the public treasurer, or any other public or county creditor upon the second bond, or any other officer upon the

1796.

Payable to the governor & his successors, in whose name a person injured may bring suit.

Not void upon the first recovery.

Second bond payable as the first.

Its condition.

May be sued upon as the first bond.

Sheriff's liable to motion on both bonds in certain cases.

1796.

other bond, may, by motion to the district court, or court of quarter sessions against the obligors, giving them ten days notice of such motion, recover judgment for all money and tobacco collected by such sheriff or his deputies, and unaccounted for to the person or persons respectively entitled to receive them.

And takes oaths of fidelity and of office.

Form of the latter.

SEC. 2. Every person before he enters upon his office of sheriff or under-sheriff, shall, in open court, give assurance of fidelity to the commonwealth in the form prescribed by the constitution, and also take the following oath of office: "I, A. B. do swear (or affirm, as the case may be) that I will do right as well to poor as rich in all things belonging to my office of sheriff; that I will do no wrong to any man for any gift, reward or promise; nor for favor or hatred; that I will make due pannels of persons able and sufficient, and not suspected or procured; and that in all other things I will faithfully and impartially execute the duties of my said office according to the best of my skill and power. So help me God."

Sheriff's office vacated, if he resides out of the county.

How filled.

SEC. 3. The office of sheriff shall be considered as vacant when any sheriff shall reside out of the county in which he shall be sheriff; and such vacancy shall forthwith be filled according to the constitution and laws of this commonwealth.

To continue in office until they complete collection of taxes, &c. become due during the time for which they were appointed.

SEC. 4. The sheriffs of this state whether chosen by the people, or appointed by the executive and their deputies, shall be allowed to continue in office as collectors until they have finally completed the collection of the taxes or arrearages of taxes that have become due during the time for which such sheriffs were chosen or appointed, or where the office of sheriff is become vacant by death, resignation or otherwise, the sheriff appointed to fill such vacancy, and his deputies, shall continue to act as collectors until they shall have finally completed the collection of all taxes or arrearages of taxes that became due during the time for which their predecessors were chosen or appointed, and the former sheriff shall have power and authority to make distress on the goods or estate of any person who may be chargeable with any such taxes as aforesaid, in case of neglect or refusal to pay them when called on by such former sheriff in the same manner, and under the same regulations as is now directed by law, in case of sheriffs making distress for taxes; and the auditor shall have power and authority to

And may distress for such taxes in case of refusal &c. to pay them.

Liab. to be proceeded a-

proceed against any such former sheriff in case of neglect or refusal to account for the taxes by him received in the same manner as if he were still in office; and the former sheriffs shall also have power to collect all officers' fees put into their hands at any time before the passage of this law, and shall have authority in case of neglect or refusal of any person owing such fees, to pay the same, to make distress on the goods or the estate of persons refusing or neglecting, under the same rules and regulations, as are now directed by law for distraining for such fees, and shall be subject to the same proceedings for failing or refusing to collect or pay such fees when collected, to the respective owners as the law now prescribes against sheriffs for the same neglect or refusal: Provided however that nothing herein contained shall be so construed as to give any sheriff, collector, or their deputies, more than three years to be computed from the expiration of the term for which they were appointed or elected, to make their collections agreeable to this act.

SEC. 5. No person who has heretofore been chosen or appointed to the office of sheriff in any county, shall be eligible to said office in any other county for the term of six years from the date of his being chosen or appointed sheriff.

SEC. 6. No principal or deputy sheriff shall be hereafter eligible to either house of assembly until he has made up his collections of the public taxes, and paid into the treasury all arrearages, and shall have obtained a *quietus* for the same from the auditor of public accounts, and for one year thereafter.

SEC. 7. Every sheriff himself, or by his lawful deputies, shall from time to time execute all writs and other process to him legally issued, and directed within his county, or upon any river or creek adjoining thereto, and shall make due return thereof under penalty of forfeiting one thousand pounds of tobacco for every failure; one moiety for the better support of government and the contingent charges thereof, and the other moiety to the party grieved, to be recovered with costs, by action of debt or information in any court having jurisdiction in such cases; and such sheriffs shall be further liable to the action of the party grieved at the common law, for his or her damages. And for every false return the sheriff shall forfeit and pay three thousand pounds of

1796

gainst by the auditor.

Old sheriffs to collect fees put in their hands.

And may distress for them.

How liable for failing to collect or pay such fees when collected. Proviso.

No person having acted as sheriff in one county can be chosen in another for a certain time.

Ineligible to general assembly until they obtain a *quietus*.

Duties of sheriffs.

Penalty for failing therein.

How recoverable.

Liable to the party grieved.

Penalty on sheriffs for a false return.

1796

Where to make
return of "not
found."

What return
where defend-
ant resides in
another county.

Prohibited to
execute process
on certain days
and persons.

Exceptions.

Prohibited to
take certain
bonds by color
of office.

Exceptions.

Shall take no
fee or reward
but such as are
allowed by law.

tobacco, to be recovered, divided, and applied in the same manner as last mentioned, and shall also in like manner be liable to the party grieved for damages.

SEC. 8. No sheriff shall return upon a writ directed to him, that the defendant is not found within his bailiwick, unless such sheriff or his deputy shall have actually been at the place of residence of such defendant, and not finding him shall have left a true copy of the process, or unless such defendant's place of residence is unknown to such sheriff or officer. If the defendant cannot be arrested by the sheriff, and shall be a known inhabitant of another county, the sheriff shall return the truth of the case, and thereupon process as to such defendant shall abate.

SEC. 9. *Provided*, that it shall not be lawful for any sheriff to execute any writ or process upon Sunday, nor upon any person attending his duty at any muster of the militia, or any election of representatives of this state, or of the United States; or of any election either of the senate of this state, or the president of the United States; nor on any person attending as a witness being duly summoned, or on any order of survey issued from any court; or as a witness attending an arbitration made by order of court, or commissioners appointed to take depositions in case of contested elections: and that all process so executed shall be illegal and void, unless the same be issued against any person or persons for treason, felony, riot, breach of the peace, or upon an escape out of prison or custody; and such process shall and may be executed at any time or place.

SEC. 10. It shall not be lawful for any sheriff or his deputy to take any obligation of or from any person or persons in his custody, for or concerning any matter relating to his office, otherwise payable than to himself as sheriff, and dischargeable upon the prisoner's appearance, and rendering himself at the day and place required in the writ whereupon he was or shall be taken or arrested. And every obligation by any sheriff taken in any other manner or form by colour of his office, shall be null and void; except in any special case any other obligation is or shall be by law particularly and expressly directed. And no sheriff of any county within this commonwealth, shall demand or take any other or greater fee or reward whatsoever, or shall have any allowance, reward or sa-

tisfaction from the public for any services or business by him done, other than the allowance given and provided by law from time to time, and all other services shall be by him done *ex officio*. Every contract made between any sheriff and any person in his custody, except such as the law prescribes, and except bonds made for the payment of money or tobacco, actually advanced by the former to discharge the other from imprisonment, shall be void.

1796.

What contracts of sheriffs void.

SEC. 11. Every sheriff shall, upon the receipt of any writ of execution, without fee for doing the same, endorse on the back thereof the day of the month and year when he received the same.

Shall endorse on every writ of execution the time of receiving it.

SEC. 12. The sheriff or other officer serving an execution, if the property be actually sold or the debt paid, shall, in lieu of the commission heretofore given by law, be allowed a commission of five per centum on the first hundred pounds, or ten thousand pounds of tobacco, and two per centum on all sums above that; but where he shall have proceeded to sale, and the defendant shall have replevied, such sheriff or collector shall be allowed only one half of such commission.

Sheriff's commission.

SEC. 13. Every sheriff shall receive and collect the taxes due to the commonwealth; and shall also collect all levies, fines, forfeitures and amercements, and all officers' fees; and shall account for and pay the same in the manner directed by law.

Further duties.

SEC. 14. If any persons indebted for taxes or levies, shall fail to pay the same by the time limited by law, the sheriff or collector may distrain any goods which shall be found on the land whereon the debtor lives, and in his possession, notwithstanding such goods may be comprised in any deed or mortgage; and if the taxes or levies be not paid, may proceed to the sale thereof as in other cases of distress; but such sheriff or collector shall not seize slaves on that or any other occasion where other goods sufficient may be had, nor make any unreasonable distress on pain of answering damages to the party grieved and full costs.

Distrain for taxes and levies.

And sell. Not to seize slaves if other goods can be had. Or make unreasonable distress.

SEC. 15. The sheriff shall have power to collect or distrain for any arrearages of taxes, levies, or officers' fees, which may remain uncollected by his predecessor at the time of his death or removal from office, and shall account for the same in like manner as for other collec-

May distrain for taxes &c. uncollected by his predecessor.

1796.

Deliver account
of taxes & give
receipt for pay-
ment thereof,

tions, and be subject to the like remedy on his failing to account for and pay the same.

SEC. 16. Every sheriff or collector shall deliver to the person from whom taxes, levies or fees are demanded, or his agent if present, an account stating distinctly every article of the demand, and offer to give a receipt for the same, and shall have no power to make distress before such account and receipt shall have been tendered where the debtor or his agent shall reside in the county, unless he abscond.

Penalty for fail-
ing to levy ex-
ecutions.

SEC. 17. All sheriffs, coroners or other persons authorised to levy executions of any kind on behalf of the commonwealth, and failing so to do according to law, or withholding any such execution for any longer time than one month after the return day, shall forfeit and pay to the commonwealth at the rate of fifteen per centum per annum on the amount of such execution, to be computed from the return thereof until such execution be actually returned.

For making
false return.

SEC. 18. And any officer as aforesaid who shall make any false return on any such execution, shall forfeit and pay twenty-five per centum on the amount of such execution.

Or failing to
pay the money
thereon when
returned satis-
fied,

SEC. 19. And in case any sheriff, coroner or other officer, shall levy on behalf of the commonwealth any execution, and shall return the same as satisfied, paid or discharged, or in any other words, form or manner, which shall entitle the debtor to a credit therefor, either wholly or in part, and shall fail to pay the amount of such credit within one month after the return day of such execution or other process, then such sheriff or other officer so failing shall forfeit and pay to the commonwealth double the damages and double the interest to which the debtor against whom the said execution may have issued was subject, to commence and accrue on the return day of such execution, and to continue until payment be made into the treasury. And in all such cases where no damages are expressed, but interest only is required by the said execution from the debtor, the sheriff or other officer failing to pay to the treasurer within one month after the return day of such execution, shall forfeit and pay at and after the rate of twenty per centum per annum on the amount.

SEC. 20. And whereas great inconvenience arises from

sheriffs going out of office after the levying such execution, and before the same be fully discharged: *Be it therefore enacted*, that upon all executions in behalf of the commonwealth already issued, or hereafter to be issued, and which have been and shall be levied, but not discharged, whereby subsequent process is necessary to be issued, every such subsequent process may at the discretion of the attorney-general be directed to such person specially by name as was high sheriff at the time of levying the former execution, who shall proceed in the execution of such subsequent process until the debt be fully paid, notwithstanding such person's time as sheriff of the county be expired.

1796.

Where an execution on behalf of the commonwealth has been levied but not discharged, & the sheriff goes out of office, subsequent process may be directed to him specially by name.

SEC. 21. And all and every deputy sheriff levying any execution for, or on behalf of the commonwealth, shall on failing to sign in addition to his own name, the name of the high sheriff under whom he acts, be subject to the same fine as is hereby inflicted for withholding an execution, to continue until such return be amended by the addition of the high sheriff's name, or the amount of such execution be actually paid; and in case of inability in any deputy sheriff to pay such fine, the same may be recovered of the high sheriff, which he may thereafter recover of such deputy by motion in the court of quarter-sessions of his county, on giving ten days previous notice to the deputy so failing.

Penalty on deputy's failing to add the name of his principal.

SEC. 22. And whereas doubts have arisen in case of fines and forfeitures incurred by neglect of certain duties whether a compliance with such neglected duties after the period particularly assigned for performance, doth not bar a recovery of the fines: to remove which doubts, *Be it therefore enacted*, that no compliance with such duties as are by this act prescribed after the respective periods assigned for performance, and notice given of an intended motion as hereinafter is mentioned, shall bar a recovery of the fines and forfeitures.

Sheriff complying with his duty after notice of a motion, no bar to recovery of the fine.

SEC. 23. In all cases of *feri facias* not levied by reason that the effects in a public debtor's possession cannot be taken in consequence of any previous *bona fide* execution, mortgage, deed of trust, or any other conveyance or incumbrance whatsoever, the sheriff holding such execution shall set forth in his return fully and explicitly the nature of the conveyance or incumbrance under which a claim is set up, and in what court the same is record-

Duty of a sheriff where the effects of a public debtor have been previously executed, &c.

1796

Courts in hearing, to give preference to cases of public nature.

Penalty for attempting to injure the sale of goods of a public debtor.

Clerks to deliver their fee bills to the sheriffs, & when.

And distrain if not paid.

Surveyor's fee.

Sheriff to collect them.

ed, and if by virtue of executions, the name of the persons at whose instance such executions issued, the amount of each, and from what court they were issued, in order that the attorney-general may institute such proceedings as he may think proper against all persons concerned, in order to have their claims or demands fully ascertained; and all courts wherein such proceedings shall or may be instituted, are hereby authorised to give the preference in hearing all such cases before others of any kind or nature whatsoever, and to quicken the same by such rules as by them shall seem expedient.

SEC. 24. If any person shall attempt to stop, interrupt or injure the sale of the estate of any public debtor, taken by virtue of an execution, by any fraudulent execution, conveyance or incumbrance whatsoever, he shall forfeit to the commonwealth the sum of one hundred pounds.

SEC. 25. The clerks of every court respectively shall, annually, before the first day of March, deliver or cause to be delivered to the sheriff of every county in this commonwealth respectively, their accounts of fees due from any person or persons residing therein, having first made the proper deductions at the foot of every such account, which shall be signed by the clerks respectively; and the said sheriffs are hereby required and empowered to receive such accounts, and to collect, levy and receive the several sums of money therein charged of the persons chargeable therewith; and if such person or persons after the said fees shall be so demanded, shall refuse or delay to pay the same till after the tenth day of April in any year, the sheriff of the county wherein such person inhabits, or of the county in which such fees become due, shall have full power, and is hereby required to make full distress of the slaves or goods and chattels of the party so refusing or delaying payment, either in that county where such person inhabits or where the said fees become due.

SEC. 26. The surveyor of every county within this commonwealth may deliver, or cause to be delivered to the sheriff of every county respectively, his amount of fees now due, or hereafter to become due, from any person or persons residing therein, which account shall be signed by the surveyor; and the sheriffs are hereby required and empowered to receive such accounts, and to collect, levy and receive the several sums of money there-

in charged : and if such person or persons after the said fees shall be so demanded, shall refuse or delay until after the tenth day of April in any year, to pay such of the said fees as shall have been put into the hands of the sheriff before the twentieth day of January preceding, the sheriff of that county wherein such person inhabits, or of the county in which such fees became due, shall have full power, and is hereby required to make distress of the slaves, or goods and chattels, of the party so refusing or delaying payment either in that county where such person inhabits, or where the said fees become due.

1796.

May distrain.

SEC. 27. And the sheriff of any county, for all fees which shall remain due and unpaid after the said tenth day of April in any year, either to himself or the sheriff of another county, which shall be put into his hands to collect as aforesaid, is hereby authorized and empowered to make distress and sale of the goods and chattels of the party refusing or delaying payment in the same manner as for other fees, due to any of the officers herein before mentioned.

May distrain for his own or other sheriff's fees, as for other officer's fees.

SEC. 28. But no action, suit, or warrant from a justice, shall be had or maintained for clerk's or surveyor's fees, unless the sheriff shall return that the person owing or chargeable with such fees, hath not sufficient within his bailiwick whereon to make distress, except where the clerk or other officer as aforesaid, shall have lost his fee-book by fire or other misfortune, so that he be hindered from putting his fees into the sheriff's hands to collect, and in that case any suit or warrant may be had and maintained for the recovery thereof. And if any sheriff shall be sued for any thing by him done in pursuance of this act, he may plead the general issue, and give this act in evidence.

No suit or warrant for fees.

Exceptions.

SEC. 29. The sheriff of every county shall, upon or before the last day of May in every year, account with the clerks of the respective courts and the respective surveyors, for all fees put into his hands pursuant to this act, and pay the same, abating six per centum for collecting ; and if any sheriff shall refuse to account for, or pay the whole account of fees put into his hands after the deduction aforesaid is made, together with an allowance of what is charged to persons not dwelling or having no visible estate in his county, it shall and may be lawful for

When to account for fees.

Liable to motion on failure.

1796.

the clerks and surveyor, upon a motion made in the next succeeding district court, or in the court of quarter sessions of the county of such sheriff to demand judgment against such sheriff for all fees wherewith he shall be chargeable by virtue of this act; and such court is hereby authorized and required to give judgment accordingly, and to award execution thereupon, provided the sheriff has ten days previous notice of such motion.

Remedy when made liable by the act of his deputy.

SEC. 30. Where any under-sheriff hath heretofore so proceeded, or shall hereafter so proceed upon any writ of execution or other process in the course of the collection of levies, fees and penalties, or in making other distress, as that judgment may by law be thereupon entered against his principal sheriff upon motion, in every such case either the creditor or sheriff may obtain judgment against the under-sheriff and security, his or her executors or administrators for such default, in like manner upon such notice, and subject to the like execution as such law directs against the sheriff.

No security to be taken on execution against a sheriff.

SEC. 31. *And be it further enacted,* That when any execution shall issue against the estate of any sheriff or under-sheriff, or their securities, upon a judgment obtained against such sheriff or under-sheriff and security, for money or tobacco received by such sheriff or under-sheriff by virtue of any execution or process levied or executed by them in any manner as sheriffs, no security for payment of the money or tobacco mentioned in such execution at a future day, or to have the goods forthcoming at the day of sale, shall be taken or received. But the officer taking such estate in execution, shall proceed immediately to the sale thereof, notwithstanding such security shall be tendered; and for the better direction of such officer, the clerk issuing such execution shall endorse thereon that no security of any kind is to be taken.

But the goods to be sold immediately.

How the old sheriff to deliver over prisoners to the new.

SEC. 32. When any sheriff shall be removed from office an indenture between him and the new sheriff for delivering over prisoners, or an entry upon the records of the county court of the names of the several persons and causes of their commitment, shall be sufficient to discharge the old and to charge the new sheriff as to such prisoners.

Escape warrants

SEC. 33. If any person committed to jail shall thence escape, on affidavit or proof thereof by the sheriff or jail-

or, any justice of the peace, if the escape were from a county jail, or if from any public jail, any judge of the court by whose authority he was committed, shall and may issue as many warrants as are thought necessary, under his hand and seal, directed to all sheriffs and constables in the commonwealth, reciting the cause of imprisonment and the time of escape, and commanding every of them in their respective counties and precincts, to retake such prisoner and convey and commit him to the jail of the county wherein such retaking shall be, there to remain until discharged by due course of law; which warrant, every sheriff or constable into whose hands the same shall come, is hereby required to obey; and on the commitment of every such prisoner so retaken, the sheriff or jailor to whom he is committed, shall give a receipt for the body, and shall make return thereof upon the warrant to the court by whose authority the prisoner was committed; and in case the prisoner was charged in execution, the said sheriff or jailor shall keep him in custody without bail or mainprise, until he shall have satisfied the debt, or be otherwise discharged by due course of law, if the prisoner shall have been committed by breach of the peace, or behaviour, or shall have escaped before it was determined whether he ought to be tried in the district court for some crime he had been charged with, or after it was determined that he might be tried for such crime in the court of quarter sessions, the sheriff to whom he shall be committed after he was retaken, shall cause him to be removed to the jail from whence he escaped: if he escaped after it was determined that he ought to be tried in the district court, charged with, or convicted of, any crime, or escaped from the public jail, then such sheriffs shall cause him to be removed to the public jail. No judgment shall be entered against a sheriff or other officer in any suit to be brought for, or by reason of the escape of debtors in his custody, unless the jury who tried the issue shall expressly find that the prisoner escaped with the consent or through the negligence of such sheriff, his deputy, or other officer, that he might have been retaken, but that the sheriff or other officer neglected to make immediate pursuit. In case of such escape, neither with the consent nor through the negligence of the sheriff, the party at whose suit the prisoner was committed, may by action on the case recover damages

1796.

Proceedings

Sheriff not liable for escape, unless jury find it to be negligence.

Person aiding in the escape, liable.

1796.

Impress guards
to secure pris-
oners.

Expences of
guards how de-
rayed.

Penalty for not
attending to
settle.

against any person or persons by whose aid in any man-
ner he escaped: any person furnishing a prisoner with
instruments or arms to facilitate his escape, shall be
deemed guilty of a misdemeanor, although no escape
shall actually have happened. When the sheriff of any
county shall have cause to suspect that any person com-
mitted to jail for treason, felony, or other capital crime,
will attempt to escape, or that others will endeavor to
rescue him, such sheriff is empowered and required to
impress a sufficient guard for securing such prisoner so
long as he shall continue in prison; and the expence of
such guard shall be levied by the court of the county, and
repaid by the public.

SEC. 34. If any sheriff shall fail to attend the justices
who shall be appointed by his county court to settle with
him at the time and place they shall appoint, provided he
have reasonable notice thereof, he shall forfeit and pay
the sum of one hundred dollars, to be recovered with
costs by action of debt or information in the court of
quarter sessions of the county, to be applied towards les-
sening the county levy.

This act shall commence and be in force from and af-
ter the passage thereof.

CHAPTER CCLXXXI.

*An ACT directing the method of proceeding in courts of
equity, against absent debtors, or other absent defen-
dants, and for settling the proceedings on attachments
against absconding debtors.*

Approved December 19, 1796.

See the prelection to chap. 23.

The necessity of advertising at the court-house and publishing at the meet-
ing-house, has been done away by an act of 1803, (Vol. III, chap. 88.) The
same act directs that a certificate of the printer with a copy of the order, shall
be evidence of publication.

Absent defend-
ants how pro-
ceeded against.

SECTION 1. If any suit shall be depending, or here-
after commenced in any court of chancery in this com-
monwealth, against any defendant or defendants who
are out of this country, and others within the same hav-
ing in their hands effects of, or otherwise indebted to
such absent defendant or defendants, and the appearance
of such absentees be not entered and security given to
the satisfaction of the court for performing the decrees,

1796.

upon affidavit that such defendant or defendants are out of the county, or that upon enquiry at his, her or their usual places of abode, he, she or they could not be found, so as to be served with process; in all such cases the said courts of chancery may make any order and require surety, if it shall appear necessary, to restrain the defendants in this country from paying, conveying away, or secreting the debts by them owing to, or the effects in their hands of such absent defendant or defendants, and for that purpose may order such debts to be paid and effects delivered to the said plaintiff or plaintiffs upon their giving sufficient security for the return thereof to such persons, and in such manner as the court shall direct.

SEC. 2. The court shall also appoint some day in the succeeding term for the absent defendant or defendants, to enter his, her or their appearance to the suit, and give security for performing the decree: a copy of which order shall be forthwith published in the Kentucky Gazette, or Herald, and continued for two months successively, and shall also be published on some Sunday immediately after divine service, in such church or meeting-house as the court shall direct; and another copy shall be posted at the front door of the said court-house. If such absent defendant or defendants shall not appear and give such security within the time limited, or such further time as the court may allow them, for good cause shewn, the court may proceed to take such proof as the complainant shall offer: and if they shall thereupon be satisfied with the justice of the demand, they may order the bill to be taken as confessed, and make such order and decree therein as shall appear just, and may enforce due performance and execution thereof by such ways and means as hath heretofore been used for enforcing other decrees, requiring the plaintiff or plaintiffs to give such security as the court shall approve for abiding such future order as may be made for restoring the estate or effects to the absent defendant or defendants upon his or their appearance, and answering the bill; and if the plaintiff or plaintiffs shall refuse to give or not be able to procure such security, the effects shall remain under the direction of the court in the hands of a receiver or otherwise for so long a time, and shall then be finally disposed of in such manner as to the court shall seem just.

SEC. 3. If any person or persons who shall be out of

1796

Abient def-
dant appearing
within 7 years
after decree,
may petition to
have the cause
re-heard.

May answer the
bill.

In what cases a
decree against
absent defen-
dants to stand
confirmed.

Further pro-
ceedings against
absent defen-
dants.

the commonwealth at the time any decree is pronounced as aforesaid, shall, within seven years from the passing such decree, return and appear openly; or in case of his or her death, if his or her heir, executor, or administrator shall, within the said seven years be, and appear openly within this commonwealth, the plaintiff or plaintiffs, their executors or administrators, shall serve such person or persons so returning or appearing, with a copy of the decree within a reasonable time after such return or appearance shall be known to the plaintiff or plaintiffs, and thereupon such defendants, or their representatives, may within twelve months after such service, or those defendants not served with a copy, or their representatives, may within seven years after the decree pronounced, appear in court and petition to have the cause re-heard; and upon their paying down, or giving security for payment of such costs as the court shall think reasonable; they shall be admitted to answer the bill, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree and execution had, as if there had been no former decree in the cause: but if the several defendants, or their representatives, upon whom the decree shall be so served, shall not within twelve months after such service, and the other defendants, or their representatives, upon whom no such service is made, shall not, within seven years from the time of the decree pronounced, appear and petition to have the cause re-heard as aforesaid, and pay or secure to be paid such costs as the court may think reasonable, all and every decree to be made in pursuance of this act against any defendant or defendants so failing, shall stand absolutely confirmed against him, her or them, his, her or their heirs, executors or administrators; and all persons claiming under him, her or them, by virtue of any act or conveyance done, or made subsequent to the commencement of the suit, and at the end of such term the court may make such further order for quieting the plaintiff or plaintiffs in any such suits in their possession of, and title to the estate and effects so sequestered or made liable as to them shall seem reasonable.

SEC. 4. In all cases whatever where a suit is or shall be depending in any court of chancery, concerning any matter or thing whatever, against any absent defendant or defendants, the court may, on satisfactory proof to

V. YEAR OF THE COMMONWEALTH.

595

them made, that such defendant or defendants is or are out of this commonwealth; or that upon enquiry at his, her or their usual places of abode, he, she or they could not be found, make any order similar to that which is directed to be made in case of absent debtors, adapting the same to the nature of the case; a copy of which order shall be published in like manner as is directed in case of absent debtors, and thereupon if the appearance of such absent defendant or defendants, be not entered, the complainant may proceed in like manner as if an appearance had been entered: *Provided always*, that where such decree shall be made, such absent defendant or defendants may, at any time within seven years, be permitted to file his, her or their answer, and to shew cause why the said decree should be set aside; upon which the courts may make such decree as shall appear to be equitable.

1796

SEC. 5. It shall be lawful for any justice of the peace, upon complaint to him made by any person that his debtor is removing out of the county privately, or absconds and conceals himself, so that the ordinary process of law cannot be served upon him, to grant an attachment against the estate of such debtor, or so much thereof as shall be of value sufficient to satisfy the debt and costs of such complainant; which attachment where the debt or demand shall be of the value of five pounds current money, or one thousand pounds of tobacco or upwards, shall be returnable to the next court of quarter sessions, and directed to and served by the sheriff or his under sheriff, unless in cases where the sheriff is a party interested, and then the same shall be directed to and served by the coroner. And it shall be lawful for such sheriff or officer to serve and levy the same upon the slaves, goods and chattels of the party absconding, wherever the same shall be found, or in the hands of any person or persons indebted to, or having any effects of the party absconding, and to summon such garnishee or garnishees to appear at the next court of quarter sessions to be held for the said county, there to answer upon oath what he or she is indebted unto such party, and what effects of such party he or she hath in his or her hands, or had at the time of serving such attachment, which being returned executed, the court may thereupon compel such garnishee to appear and answer as aforesaid.

Proceedings on attachments

When the debt is of the value of five pounds, or one thousand lbs. of tobacco or upwards.

Garnishee.

SEC. 6. Every justice of the peace before granting such

1796.

Justice before
granting the at-
tachment to
take bond, &c.
Nature of the
bond.

Attachment
void if no bond
be taken.

Attachments
how replevia-
ble,

Sheriff's duty
in case of at-
tachment re-
plevied,

Proceedings
on attachments
for sums under
five pounds.

attachment, shall take bond and security of the party for whom the same shall be issued, in double the sum to be attached, payable to the defendant, for satisfying and paying all costs which shall be awarded to the said defendant, in case the plaintiff suing out the attachment therein mentioned shall be cast in his suit, and also all damages which shall be recovered against the said plaintiff for his suing out such attachment; which bond shall be by the same justice returned to the court to which the attachment is returnable, and the party entitled to such costs for damages may thereupon bring suit and recover: and every attachment issued without such bond taken, (or where no bond shall be returned) is hereby declared illegal and void, and shall be dismissed.

SEC. 7. All attachments shall be repleviable by appearance and putting in good bail, if by the court ruled so to do, or by giving bond with good security to the sheriff or other officer serving the same; which bond the sheriff or other officer is hereby empowered and required to take to appear at the court to which such attachment shall be returnable, and to abide by and perform the order and judgment of such court.

SEC. 8. Upon the defendant or defendants replevying any attached effects, by giving bond and security to the sheriff or other officer as aforesaid, the sheriff shall return the name of the security by him so taken, and if such security shall be adjudged insufficient by the court; and if the defendant shall fail to appear and give special bail, if thereunto ruled by the court, such sheriff and security shall be subject to the same judgment and recovery, and have the same liberty of defence and relief as if such security had been taken upon execution of *mesne* process.

SEC. 9. Upon complaint made to a justice of the peace, that any person indebted to the complainant in any less sum than five pounds current money, or one thousand pounds of tobacco, is removing out of the county privately, or so absconds or conceals himself that a warrant cannot be served upon him, it shall be lawful for such justice, taking bond and security as in this act is before directed in the case of attachments returnable to the court of quarter sessions, to grant an attachment against the estate of such debtor, or so much thereof as shall be value sufficient to satisfy the debt and costs of the party praying such attachment, directed to the she-

riff or any constable of his county, and returnable before himself or any other justice thereof, who shall and may proceed thereupon as is herein directed in the case of an attachment, returnable to the court of quarter sessions.

1796.

SEC. 10. And if any attachment returnable to the court of quarter sessions, or before a justice of the peace, shall be returned executed, and the goods and effects attached shall not be replevied, as this act directs, the plaintiff shall be entitled to a judgment for his whole debt, and may take execution thereupon; and all goods and effects attached and not replevied as aforesaid, shall be sold and disposed of for and towards the satisfaction of the plaintiff's judgment, in the same manner as goods taken in execution upon a writ of *fieri facias*; and where any attachment shall be returned served in the hands of any garnishee, it shall be lawful upon his or her appearance and examination in the manner by this act before directed, to enter up judgment and award execution against every such garnishee and garnishees, for all sums of money or tobacco due from him, her or them, to the person absconding, or in his, her or their custody or possession for the use of such person, or so much thereof as shall be of value sufficient to satisfy the debt and costs of the complainant; and all goods and effects whatsoever in the hands of any garnishee or garnishees belonging to such absconding person, shall be liable to satisfy such judgment.

Proceedings
on attachments
returned execu-
ted, and not re-
plevied.

Against garni-
shees.

CHAPTER CCLXXXII.

An ACT for the relief of Creditors against Fraudulent Devises.

Approved December 19, 1796.

Copied from an act of 1789, which was copied from an English statute of William and Mary.

SEC. 1. WHEREAS it is not reasonable or just, that by the practice or contrivance of any debtors, their creditors should be defrauded of their just debts; and nevertheless it hath often so happened, that where several persons having by bonds or other specialties, bound themselves and their heirs, have afterwards died seized in fee-simple of and in messuages, lands, tenements and hereditaments, or having power or authority to dispose

Preamble.

1796.

Devises of
lands, &c. void
as to creditors,
&c.

of, or charge the same by their wills or testaments, have to the defrauding of such their creditors by their last wills or testaments devised the same, or disposed thereof in such manner as such creditors have lost their said debts: for remedy of which, and for the maintenance of just and upright dealing, *Be it enacted by the general assembly*, that all wills and testaments, limitations, dispositions, or appointments of or concerning any messuages, lands, tenements or hereditaments; or of any rent, profit, term, or charge out of the same, whereof any person or persons at the time of his, her or their decease, shall be seized in fee-simple in possession, reversion or remainder, or have power to dispose of the same by his, her or their last wills or testaments, shall be deemed and taken (only as against such creditor or creditors as aforesaid, his, her, and their heirs, successors, executors, administrators and assigns, and every of them) to be fraudulent, and clearly, absolutely, and utterly void, frustrate, and of non-effect; any pretence, colour, feigned or presumed, consideration, or any other matter or thing to the contrary notwithstanding.

Creditor may
have a joint ac-
tion against the
heir and devi-
see.

SEC. 2. And for the means that such creditors may be enabled to recover their said debts, *Be it further enacted*, that in the cases beforementioned, every such creditor shall and may have and maintain his, her and their action and actions of debt, upon his, her and their said bonds and specialties, against the heir and heirs at law of such obligor or obligors, and such devisee and devisees, jointly by virtue of this act; and such devisee or devisees, shall be liable and chargeable for a false plea by him or them pleaded, in the same manner as any heir should have been for any false plea by him pleaded, or for not confessing the lands or tenements to him descended.

Exception of
devisees, &c.
for payment of
just debts.

SEC. 3. *Provided always, and be it enacted by the authority aforesaid*, that where there hath been, or shall be any limitation or appointment, devise or disposition of, or concerning any messuages, lands, tenements or hereditaments, for the raising or payment of any real and just debt or debts, or any portion or portions, sum or sums of money for any child or children of any person other than the heir at law, according to, or in pursuance of any marriage contract or agreement in writing, *bona fide* made before such marriage, the same and every of

Or portions in
pursuance of a-
ny marriage
contract.

them shall be in full force; and the same messuages, lands, tenements, and hereditaments, shall and may be holden and enjoyed by every such person or persons, his, her and their heirs, executors, administrators and assigns, for whom the said limitation, appointment, devise or disposition was made, and by his, her, and their trustee or trustees, his, her and their heirs, executors, administrators and assigns, for such estate or interest as shall be so limited or appointed, devised or disposed, until such debt or debts, portion or portions, shall be raised, paid, and satisfied, any thing in this act contained to the contrary notwithstanding.

1796.

SEC. 4. And whereas several persons being heirs at law, to avoid the payment of such just debts as in regard of the lands, tenements and hereditaments, descending to them, they have by law been liable to pay, have sold, aliened, or made over such lands, tenements or hereditaments, before any process was, or could be issued out against them:

If the heir at law aliens the lands, &c. before suit commenced against him, he shall be liable to the value of the land.

Be it further enacted, That in all cases where any heir at law shall be liable to pay the debt of his ancestor, in regard of any lands, tenements or hereditaments descending to him, and shall sell, alien or make over the same before any action brought, or process sued out against him, such heir at law shall be answerable for such debt or debts in action or actions of debt, to the value of the said land so by him sold, aliened or made over; in which cases all creditors shall be preferred as in actions against executors and administrators; and such executions shall be taken out upon any judgment or judgments so obtained against such heir, to the value of the said land, as if the same were his own proper debt or debts, saving that the lands, tenements and hereditaments, *bona fide* aliened, before the action brought shall not be liable to such execution.

SEC. 5. *Provided always, and be it further enacted,* That where any action of debt upon any specialty is brought against any heir, he may plead *riens per descent*, at the time of the original writ brought, or the bill filed against him, any thing herein contained to the contrary notwithstanding; and the plaintiff in such action may reply that he had lands, tenements or hereditaments from his ancestor before the original writ brought or bill filed; and if upon issue joined thereupon, it be found for the

Heir may plead *riens per descent*.

1796. If found against him jury to enquire of the value of the lands. Such enquiry unnecessary where there is judgment by confession on demurrer, etc. Devisee liable as the heir at law, although the lands be aliened before action brought.

plaintiff, the jury shall enquire of the value of the lands, tenements or hereditaments so descended, and thereupon judgment shall be given, and execution be awarded as aforesaid; but if judgment be given against such heir by confession of the action, without confessing the assets descended, or upon demurrer, or *nihil dicit*, it shall be for the debt and damages, without any writ to enquire of the lands, tenements or hereditaments so descended.

SEC. 6. *Provided also, and be it further enacted, That* all and every devisee and devisees made liable by this act, shall be liable and chargeable in the same manner as the heir at law by force of this act, notwithstanding the lands, tenements and hereditaments to him or them devised, shall be aliened before the action brought.

CHAPTER CCLXXXIII.

An ACT directing the mode of suing out and prosecuting writs of Habeas Corpus.

Approved December 19, 1796.

Taken from an act of May, 1784, (Chap. 35.)

Writ of habeas corpus Proceeding on.

SECTION 1. *BE it enacted by the general assembly,* That whensoever a habeas corpus shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the jail or prison in which the party suing it out is detained, unless the warrant of commitment plainly and specially express the same to have been for treason or felony, if the charges of bringing the prisoner, to be ascertained by the court or judge who awarded the writ, and thereon endorsed not exceeding twelve pence per mile, be paid or tendered, and sufficient security for paying the charges of carrying him back in case he be remanded, and that he will not escape by the way, be given; then the officer or his deputy, within three days after such service, or if the prisoner is to be brought more than twenty miles within so many days more as will be equal to one day for every twenty miles, of such further distance shall make return of the writ, and bring the body of the prisoner, or cause it to be brought before the proper judge or judges according to the command thereof, and shall then likewise certify the true causes of his detainer or imprisonment.

SEC. 2. Every such writ shall be signed by him who awarded it.

SEC. 3. And if any person shall be or stand committed or detained as aforesaid for any crime unless it be for treason or felony, plainly expressed in the warrant of commitment in the vacation time, the prisoner not being convict, or in execution by legal process, or any one on his behalf, may appeal and complain to any judge of the district court, or justice of the court of quarter-sessions, who at the request of such prisoner or other person on his behalf attested by two witnesses present at the delivery thereof, is hereby authorised and empowered upon a view of the copy of the warrant of commitment, or detainer or otherwise, upon affidavit made copy was desired to be given by him in whose custody the prisoner is detained, to award and grant a *habeas corpus*, to be directed to the officer in whose custody the party committed or detained shall be, returnable immediately before the said judge or justice, or any judge or justice of one of the said courts, and upon service thereof as aforesaid the officer or his deputy in whose custody the party is so committed and detained, shall within the times before respectively limited, bring the prisoner before the court, or one of the judges or justices thereof, before whom the writ is made returnable, or in case of his absence, before any other of them, with the return of the writ and the true causes of the commitment and detainer; and thereupon the judge or justice before whom the prisoner shall be brought, shall, within two days thereafter discharge him from imprisonment, taking his recognizance with security in any sum according to the direction of the judge or justice, having regard to the circumstance of the prisoner and the nature of the offence, for his appearance in the district court the term following, or in some other court where the offence is properly cognizable, as the cause may require; and then also certify the same writ with the return thereof, and the said recognizance into the said court where such appearance is to be made, unless it appear to the judge that the party so committed is detained upon a legal process, under a warrant out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand of any of the judges or justices, or some justice of the peace for

1796.

Any judge of a district court or justices of a court of quarter sessions may award writs of *habeas corpus* & in what cases.

Further proceedings on a *habeas corpus*.

1796. such matters or offences, for which by the law the prisoner is not bailable.*

If prisoner neglects for two terms to pray *habeas corpus*, it shall not be granted to him in vacation.

Penalty on officer neglecting to obey the writ, &c.

SEC. 4. If any person shall have wilfully neglected by the space of two terms after his imprisonment, to pray a *habeas corpus* for his enlargement, such writ shall not be granted to him in vacation in pursuance of this act.

SEC. 5. Any officer neglecting or refusing to make the return aforesaid, or to bring the body of the prisoner according to the command of the writ within the time aforesaid, or not delivering a true copy of the warrant of the commitment and detainer within six hours after demand thereof made to the prisoner or person demanding it on his behalf; which copy the officer or his deputy is hereby required to deliver, shall forfeit to the prisoner one hundred pounds; to recover which, the right of action shall not cease by the death of either, or both the parties.

Person delivered upon a *habeas corpus* not to be recommitted for the same offence.

SEC. 6. No person who shall have been delivered upon a *habeas corpus* shall afterwards be imprisoned or committed for the same offence, otherwise than by the order or process of the court wherein he shall be bound by recognizance to appear or some other court having jurisdiction of the cause.

A citizen committed to prison, not to be removed but in certain cases.

SEC. 7. A citizen of the commonwealth committed to prison in custody of an officer for any criminal matter, shall not be removed from thence into the custody of another officer unless it be by *habeas corpus*, or by some other legal writ; or where the prisoner shall be delivered to the constable or other inferior officer, to be carried to some common jail, or shall be removed from one place to another within the said county in order to his discharge or trial in due course of law, or in case of sudden fire or infection, or other necessity, or where the prisoner shall be charged by affidavit with treason or felony alledged to be done in any of the other of the United States of America; in which last case he shall, on the demand of the executive authority of the state from which he fled, be sent thither in custody by order of the district court, or warrant of any two judges thereof, in vacation time, or may be bound by recognizance, with securities, before them to appear there, whichever shall seem most proper, if the said court or judges upon consideration of the matter, shall think he ought to be put upon his trial.

* Liable in the printed copies.

SEC. 8. If any judge or justice of any of the said courts in the vacation time, upon view of the copy of the warrant of commitment or detainer, or upon affidavit made that such copy was denied as aforesaid, shall refuse any writ of *habeas corpus* by this act required to be granted, being moved for as aforesaid, such judge or justice shall be liable to the action of the party grieved.

1796.

Penalty upon
any judge or
justice refusing
a *habeas corpus*.

CHAPTER CCLXXXIV.

An ACT confirming the proceedings of the magistrates in Campbell county, in fixing on Newport as the seat of justice.

CHAPTER CCLXXXV.

An ACT authorizing Harry Innes to convey certain Lands.

Approved December 14, 1796.

As agent for the Vestry of Russell parish, and acting under a power of Attorney from them, he had contracted with William Henry to give him one half of 2718 3-4 acres of land, for locating it for the use of that parish. The land was located and Innes's obligation assigned to John M. Craig; but before a conveyance was made of the moiety of the land by Innes, a law of Virginia, had repealed all laws establishing the Church of England and regulating the vestries, by means of which, this act says, the said power of Attorney became null and void. It therefore authorizes Innes to make a conveyance to Craig, the assignee of Henry.

CHAPTER CCLXXXVI.

An ACT to vest the estate of Joseph Barnett, deceased, in Commissioners for the benefit of his Creditors.

Approved December 14, 1796.

This act authorized them to convey lands contracted to be conveyed, to sell on six months' credit for the payment of debts, to collect debts due, and pay debts owing, observing the rules of priority enjoined on Executors and Administrators, and to pay the surplus to his legal representatives.

CHAPTER CCLXXXVII.

An ACT for the relief and security of Robertus Samuel Brands.

Approved December 15, 1796.

While an alien he had purchased 10812 acres of land, in Jefferson county, Virginia,—when this act passed, in Shelby county, Kentucky.—This act confirmed the purchase, as far as the commonwealth was concerned.

FEBRUARY SESSION,

1797.

CHAPTER CCLXXXVIII.

An ACT for the relief of Isaac Butler.

Approved December 17, 1796.

He was one of the Green river settlers, but had located his land so as to exclude his settlement. This act confirmed his title.

CHAPTER CCLXXXIX.

An ACT to amend an act entitled "an act concerning a revision of the Laws."

Approved November 16, 1796.

This act directed the revisors to report immediately to the general assembly, what progress they had made.

February Session, 1797.

It is recommended to the reader to turn to Chapter 310, before he reads any other act of this session.

CHAPTER CCXC.

An ACT to amend the act concerning the town of Louisville.

Approved, February 21, 1797.

Preamble.

WHEREAS, under the act, entitled "an act concerning the town of Louisville," there is no clause by which the acting trustees can compel a delivery of the property, papers and records belonging to them from the former commissioners or trustees, as directed by the said act: For remedy whereof,

Papers, records,
&c. to be given up to the acting trustees.

SECTION 1. *Be it enacted*, That where a new election of trustees for the town of Louisville shall take place, and the trustees for any of the preceding years, or any other person in whose hands they may be lodged, shall withhold such property, papers or records as aforesaid, from the acting trustees, the court of the county of Jef-

person is hereby authorised and directed to order the former trustees, or any other person having in their hands any of the papers or records aforesaid, to deliver the same to the acting trustees. And if any person shall refuse to deliver the said papers or records, agreeable to such order, the court shall fine the person so offending in the sum of twelve pounds for every refusal, to be recovered by motion at the instance of the acting trustees, provided the offenders have ten days notice of such motion; and the clerk shall issue an execution thereon for the same as in other cases. And the sheriff of the county of Jefferson is hereby directed to collect the said fines in the same manner that other fines for contempt are collected, and pay them into the hands of the acting trustees, to be by them applied to the benefit and improvement of the town of Louisville. And whereas great inconveniences have been experienced, and many boats have been lost in attempting to pass the rapids of the Ohio for want of a pilot, and from persons offering their services to strangers to act as pilots, by no means qualified for the business: for remedy whereof,

SEC. 2. *Be it further enacted*, That the county court of Jefferson is hereby authorised and directed to appoint such person or persons during good behaviour for pilots, as to them shall seem best qualified for that purpose, taking bond and security of the person so appointed, for the due and faithful performance of his office; and the pilot so appointed shall receive for each boat he pilots through the rapids, two dollars. And any other person acting as pilot without being duly authorised as by this act directed, shall, for every such offence, forfeit and pay ten dollars, to be recovered before any justice of the peace of the county of Jefferson, and collected by the sheriff or constable of said county, in the same manner that other fines are by law directed to be collected; and the sheriff or constable shall pay the money so collected to the pilot or pilots who shall be lawfully appointed under this act; and the sheriff or constable shall have the same fees for their services as they are entitled to by law for collecting fines and forfeitures in other cases: but nothing herein contained is meant to compel any owner or skipper of a boat to employ said pilot or pilots, but they shall be at liberty to pilot their own boats through the said rapids,

1797.

Penalty for refusal.

Proviso.
How to be collected and applied.

County court of Jefferson may appoint a pilot.

His fee.
Penalty on any person acting as pilot not being authorised.

How to be collected and applied.

No owner of a boat compelled to employ the pilot.

1797.

This act shall commence and be in force from the passage thereof.

CHAPTER CCXCI.

An ACT for establishing additional Inspections of Flour and Hemp.

Approved February 22, 1797.

See the prælection to chapter 58.

Preamble.

WHEREAS, it is represented to the general assembly, that inspections of flour and hemp at certain places in this commonwealth, would be of public utility:

Additional inspections established.

SECTION 1. *Be it therefore enacted by the general assembly,* That inspections of flour and hemp shall be established at the following places, to wit: In the county of Garrard, on the land of James Hogan, opposite the mouth of Hickman; and on the lands of William Davis, at the mouth of Sugar creek, in the county aforesaid, and on the lands of Samuel Johnson, on the Kentucky river, below the mouth of Hickman, in the county of Fayette; subject to such rules and regulations as inspections of the like kind are under by law within this commonwealth.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXCII.

An ACT to reduce into one the several acts concerning Mill-Dams and other obstructions in Water Courses.

Approved February 22, 1797.

See the prælection to chap. 48:

SECTION 1. *BE it enacted by the general assembly,* That when any person owning lands on one side of any water course, the bed whereof belongs to himself or to the commonwealth, and desiring to build a water grist-mill on such lands, and to erect a dam across the same for working the same, shall not himself have the fee simple property in the lands on the opposite side thereof, against which he would abut his said dam, he shall make application for a writ of *ad quod damnum* to the court of the county wherein the lands proposed for the abutment are, and having given ten days previous notice to the proprietor thereof, if he be to be found in the county, and if

Person shall apply to the county court for a writ of *ad quod damnum*.

not, then to his agent therein, if any he hath; which court shall, thereupon, order their clerk to issue such writ, to be directed to the sheriff, commanding him to summon and empanel twelve fit persons to meet upon the lands so proposed for the abutment, on a certain day to be named by the court, and inserted in the said writ, of which notice shall be given by the sheriff to the said proprietor, or his agent, as before directed, if neither of them were present in court at the time such order was made.

1797

Sheriff to summon and empanel a jury.
Notice to be given.

SEC. 2. Where the water course shall be the boundary of two counties, it shall be lawful for the jury summoned in the county where the lands proposed for the abutment are, and to examine the lands above and below of the property of others, as well without as within their county, which may probably be overflowed, and say to what damage it will be to the several proprietors, and whether the mansion house of any such proprietor, or the office, curtelage or garden, thereunto immediately belonging, or orchards will be overflowed.

Where the water course is the boundary between two counties, duty of the jury.

SEC. 3. The freeholders taken shall be charged by the sheriff impartially, and to the best of their skill and judgment, to view the said lands so proposed for an abutment, and to locate and circumscribe by certain metes and bounds, one acre thereof, having due regard therein to the interest of both parties, and to appraise the same according to its true value, to examine the lands above and below of the property of others which may probably overflow, and say to what damage it will be of to the several proprietors, and whether the mansion-house of any such proprietor, or the offices, curtelages or gardens, thereunto immediately belonging, or orchards, will be overflowed; to enquire whether, and in what degree, fish of passage or ordinary navigation will be obstructed; whether by any, or what means such obstruction may be prevented, and whether, in their opinion, the health of the neighbors will be annoyed by the stagnation of the waters.

Freeholders to be empanelled by sheriff &c.

To make enquiry, &c.

SEC. 4. The inquest so made and sealed by the said jurors, together with the writ, shall be returned by the said sheriff to the succeeding court, who shall, thereupon, order summonses to be issued to the several persons proprietors or tenants of the lands so located, or found liable to damage, if they be to be found either within the

Inquest to be made and sealed by jurors, & returned by the sheriff.
Summonses to be issued.

1797.

county where the lands found liable to be overflowed, or the lands proposed for the abutment are, and if not, then to their agent therein, if any they have, to shew cause why the party applying should not have leave to build his said mill and dam.

What proceedings to be had where the party has the fee simple property on both sides of the creek.

SEC. 5. In like manner if the person proposing to build such mill and dam shall have the fee simple property in the lands on both sides of the stream, yet application shall be made to the court of the county where in the mill-house will stand, for a writ to examine as aforesaid what lands may be overflowed, and say to what damage it will be of to the several proprietors, and whether the mansion-house of any such proprietor, or the offices, curtelages or gardens, thereunto immediately belonging, or orchards will be overflowed; also whether and in what degree fish of passage and ordinary navigation will be obstructed thereby; whether by any and by what means such obstruction may be prevented; and whether, in their opinion, the health of the neighbors will be annoyed by the stagnation of the waters; which writ shall be directed, executed and returned, as prescribed in the former case: and it shall be lawful for the jury to enquire of the damages to the several proprietors without their county as in the former case.

Court on establishing may lay the party under such conditions as they think

SEC. 6. If on such inquest or other evidence it shall appear to the court that the mansion-house of any proprietor, or the offices, curtelage or garden, thereunto immediately belonging, or orchards will be overflowed, or the health of the neighbors annoyed, they shall not give leave to build such mill and dam; but if none of those injuries are likely to ensue, they shall then proceed to consider whether all circumstances weighed, it be reasonable that such leave should be given, and shall give or not give accordingly; and if given, they shall lay the party applying under such conditions for preventing the obstruction, if any there will be, of the fish of passage and ordinary navigation, as to them shall seem right.

Party obtaining leave shall pay the value of acre and damages.

SEC. 7. And if the party applying obtain leave to build the said mill and dam, he shall, upon paying respectively to the several proprietors entitled the value of the acre located, and the damages which the jurors find will be done by overflowing the lands above or below, become seized in fee simple of the said acre of land; but, if he shall not within one year thereafter, begin to

build the said mill, and finish the same in three years, and afterwards continue it in good repair for public use, or in case the said mill and dam be destroyed if he shall not begin to rebuild it in one year after such distribution, and finish it within three years, the said acre of land shall revert to the former proprietor, and his heirs, unless at the time of such distribution of the said mill or dam the owner thereof be an infant, *feme covert*, imprisoned or of unsound mind, in which case he shall be allowed the same terms for beginning and completing the said mill and dam, after such disability removed.*

1797.

And begin to build in one year, and finish in three, except infants &c.

SEC. 8. The inquest of the said jurors nevertheless, or opinion of the court, shall not bar any prosecution or action which any person would have had in law had this act never been made, other than for such injuries as were actually foreseen and estimated by the said jury.

Inquest no bar to action unless for injuries foreseen.

SEC. 9. All millers shall well and sufficiently grind their grain brought to their mills, and in due time as the same shall be brought, and may take for toll one-eighth part and no more, of all grain, of which the remaining part shall be ground into meal, and one-sixteenth part and no more of that the remainder of which shall be ground into homony or malt. And every miller, or occupier of a mill, who shall not well and sufficiently grind as aforesaid, or not in due time as the same shall be brought, or take or exact more toll, shall, for every such offence, forfeit and pay fifteen shillings to the party injured, recoverable with costs before a justice of the peace for the county where such offence shall be committed. And where the miller shall be an indented servant or slave, his master or owner shall be liable to pay fifteen shillings for every such offence by such servant or slave committed: *Provided*, that every owner or occupier of a mill may grind his or her own grain at any time.

Millers shall grind in turn, &c.

Penalty on millers who does not.

SEC. 10. Every owner or occupier of a mill shall keep therein sealed measures of half bushel and peck, and a toll-dish sealed, and shall measure all grain by strike measure, under penalty of paying fifteen shillings for every such failure, recoverable with costs before any justice of the peace of the county wherein such mill shall be, to the use of the informer. And if the miller be a slave or servant, his master or owner shall be liable to the penalty; or if the owner of such mill shall not live within the same county, nor have any known attorney therein, the

Shall keep sealed measures.

* Remained in the printed copies.

1797.

appearance of such servant and slave before the justice to whom such complaint shall be made, shall be sufficient for him to proceed against the master or owner; but if he or she, his or her known attorney, live in the county, his or her appearance shall be required.

Owner or tenant of mill not having fifty acres shall keep no swine,

SEC. 11. No owner or tenant of any mill, not having fifty acres of land adjoining thereto, shall keep any swine unenclosed at such mill on pain that the same shall be liable to be taken and converted to his own use by the proprietors or tenant of any adjacent lands or by any person authorized by him.

Owner or occupier shall keep dam in repair over which a road crosses.

SEC. 12. The owner or occupier of every dam over which a public road passes, shall constantly keep such dam in repair at least twelve feet wide at the top through the whole length thereof, and shall keep and maintain a bridge of like breadth with strong rails on each side thereof over the pier head, flood gates or any waste cut through or round the dam under the penalty of ten shillings for every twenty-hours failure; but where a mill-dam shall be carried away or destroyed by tempest or accident, the owner or occupier thereof shall not be liable to the said penalties from thenceforth until one month after such mill shall have been so repaired as to have ground one bushel of grain.

Locks & slopes.

SEC. 13. Where the owner of any mill now standing or licensed to be built, hath by any act of assembly been compelled to make locks, stocks or opening for navigation, or the passage of fish, the same shall be continued under the conditions imposed by such act, and shall be deemed sufficient in law so long as the dam now standing or building shall remain; but it shall not be lawful to rebuild such dam in future but on enquiry by jury into the obstructions of fish and navigation, and the means of preventing the same, and the final order of the court to be applied for and conducted in the manner before directed in other cases.

Shall not erect any dam &c. without leave.

SEC. 14. It shall not be lawful for any person to erect or fix in any water-course any dam, hedge, weir, seine, drag or other stoppage, whereby navigation or passage of fish may be obstructed, save only for the purpose of working any machine or engine useful to the public; in which cases the same proceedings shall be had as before directed in case of a water grist-mill, or for the purpose of a water grist-mill before provided for: and where

any such as are not standing or shall hereafter be erected or fixed, the owner of the tenant or lands adjacent thereto (whether the same were erected or fixed by himself or another) shall cause to be abated, and whose offendeth herein shall be guilty of a nuisance, and shall forfeit and pay the sum of two dollars for every twenty-four hours the said dam, hedge, weir, seine, drag or other stoppage, shall remain an obstruction in the said water course, recoverable by warrant or action, as the case may be, one moiety of which shall go to the informer, and the other to the use of the county, and shall moreover be liable to the action of the party grieved.

1797.

Penalty.

CHAPTER CCXCIII.

An ACT to reduce into one, the several acts concerning Wills, the distribution of Intestates Estates, and the duty of Executors and Administrators.

Approved, February 24th, 1797.

This was copied from an act of 1785, as that was principally from an act of 1748.—It was amended in 1800, (Vol. II. Chap. 270.)

SECTION 1. *Be it enacted by the general assembly,* That every person aged twenty-one years, or upwards, being of sound mind and not a married woman, shall have power at his or her will and pleasure by last will and testament in writing, to devise all the estate, right, title and interest in possession, reversion or remainder, which he or she hath, or at the time of his or her death, shall have of, in or to lands, tenements or hereditaments, or annuities or rents, charged upon, or issuing out of them so as such last will and testament be signed by the testator or testatrix, or by some other person in his or her presence, and by his or her directions; and moreover, if not wholly written by himself or herself, be attested by two or more competent witnesses, subscribing their names in his or her presence.

Who may devise by will, and in what manner.

SEC. 2. *Saving to the widows of testators their dower in such lands, tenements, rents or annuities, according to the laws, which shall not be prejudiced by any devise thereof.*

Saving to widows their dower.

SEC. 3. No devise so made, or any clause thereof, shall be revocable, but by the testators or testatrix's destroying, cancelling or obliterating the same, or causing

Devise how revocable.

1797.

Will made
when testator
had no child,
void if he die
leaving a child,
or his wife *en-*
sient, &c.

Provision in fa-
vor of posthu-
mous child or
children,

No person un-
der eighteen to
dispose of his
chattels by will.
Nuncupative
wills when
void.

What proof of
them sufficient
after six months

it to be done in his or her presence, or by a subsequent will, codicil or declaration in writing, made as aforesaid : but every last will and testament made when the testator had no child living, wherein any child he might have is not provided for, or mentioned, if at the time of his death, he leave a child, or leave his wife *ensient* of a child which shall be born, shall have no effect during the life of such after-born child, and shall be void unless the child die without having been married, or before he or she shall have attained the age of twenty-one years.

When a testator having a child or children, born at the time of making and publishing his last will and testament shall at his death leave a child or children born after the making and publishing his said last will and testament, or shall leave his wife *ensient*, the child or children so after-born, or the posthumous child or children, if such child or children be unprovided for by settlement, and be neither provided for nor disinherited, but only pretermitted by the last will and testament, shall succeed to the same portion of the father's estate, as such child or children would have been entitled to if the father had died intestate. Towards raising which portion the devisees and legatees shall contribute proportionably out of the parts devised and bequeathed to them by the same will and testament.

SEC. 4. No person under the age of eighteen years shall be capable of disposing of his chattels by will.

SEC. 5. No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his habitation, or where he hath resided for ten days next preceding, except where the deceased is taken sick from home, and dies before he returns to such habitation ; nor where the value exceeds ten pounds, unless it be proved by two witnesses, that the testator called on some person present to take notice or bear testimony that such is his will, or words of the like import.

SEC. 6. After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof, shall have been committed to writing within six days after making the will.

SEC. 7. No will in writing, or any devise therein of

chattels, shall be revoked by a subsequent will, codicil, or declaration, unless the same be in writing.

SEC. 8. Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels as he might heretofore have done.

SEC. 9. If any person shall subscribe his name as a witness to a will, wherein any bequest is given to him, if the will may be not otherwise proved, the bequest shall be void, and such witness shall be allowed and compellable to appear and give testimony on the residue of the will, in like manner as if no such bequest had been made. But if such witness would be entitled to any share of the testator's estate in case the will were not established, so much of his said share shall be saved to him as shall not exceed the value of the legacy bequeathed him.

SEC. 10. The several county courts shall have power to hear and determine all causes, matters, suits and controversies testamentary, arising within their respective jurisdictions, and to examine and take the proof of wills, and grant certificates thereof, according to the methods and rules following, that is to say: If any testator shall have a mansion-house, or known place of residence, his will shall be proved in the court of the county wherein such mansion-house or place of residence is; if he hath no such place of residence, and lands be devised in the will, it shall be proved in the county wherein the lands lie, or in one of them, where there shall be lands in several counties. And if he hath no such known place of residence, and there be no lands devised, then the will may be proved either in the court of the county where the testator shall die, or that wherein his estate, or the greater part thereof shall be.

SEC. 11. When any will shall be exhibited to be proved, the court having jurisdiction as aforesaid, may proceed immediately to receive the proof thereof, and grant a certificate of such probate: if, however, any person interested, shall within seven years afterwards appear, and by his bill in chancery contest the validity of the will, an issue shall be made up whether the writing produced be the will of the testator or not, which shall be tried by a jury, whose verdict shall be final between the parties, saving to the court a power of granting a new trial for good cause, as in other trials: but no such party appearing within that time, the probate shall be forever bind-

1797

Soldiers may dispose of chattels, &c.

Devise to a subscribing witness necessary to prove a will, void.

County courts to have cognizance of causes testamentary.

How the validity of a will may be contested.

1797

How to take
the attestation
of a witness out
of the state.

ing; saving also to infants and *feme covert*s and persons absent from the state, or *non compos mentis*, the like period after the removal of their respective disabilities.

SEC. 12. It shall be lawful for the said courts respectively, when any will shall be produced to them for probate, and any witness or witnesses attesting the same shall reside out of the commonwealth, to issue a commission or commissions annexed to such will, and directed to the presiding judge of any court of law, to any notary public, mayor, or other chief magistrate of any city, town, corporation or county, where such witness or witnesses may be found, empowering him to take and certify their attestations if the person to whom any such commission shall be directed, shall certify in the manner such acts are usually authenticated by him, that the witness or witnesses personally appeared before him, and made oath or affirmed, as the case may require, that the testator signed and published the writing annexed to such commission, as his last will and testament, or that some other person signed it by his direction, that he was of disposing mind and memory, and that he or they subscribed their names thereto in his presence, and at his request such oath or affirmation shall have the same operation, and the will be recorded in like manner as if such oath or affirmation had been made in the court from whence such commission issued.

How authenticated
copies of
wills may be
admitted to
probate.

SEC. 13. Authenticated copies of wills, proved according to the laws of any of the United States, or of countries without the limits of the same, and relative to any estate within this commonwealth, may be offered for probate in the said court; but the bond and oath of the executor or administrator, with the will annexed, shall be changed from the bond and oath now required by law, in such manner as to the said court shall seem necessary; and the proof to be made by the witnesses shall be conformed to the nature of the case; but such will shall be liable to be contested and controverted in the same manner as the original might have been.

Court may
grant probate to
executors &c.

SEC. 14. All persons named as executors in any such wills shall, after the copy thereof has been admitted to record as above directed, be entitled to a probate of the said will in the same manner as if the original will had been proved in such court: and where there shall be no executors named in the said will, or the executors there-

in named shall all of them refuse the executorship, the court shall have the same power and authority to hear and determine the right of administration, and to grant a certificate for obtaining letters of administration, with the will annexed, as if the original will had been proved in court.

1797.

SEC. 15. In all such trials by jury, the certificate of the oaths of the witnesses at the time of the first probat shall be admitted as evidence to have such weight as the jury shall think it deserves.

What evidence
admitted before
a jury.

SEC. 16. No nuncupative will shall be proved within fourteen days after the death of the testator, nor until his widow (if any) and next of kin, have been summoned to contest the same if they please.

When to prove
a nuncupative
will.

SEC. 17. If the court, having jurisdiction as aforesaid, shall be informed that any person hath the will of a testator in his custody, such court may summon such person, and by proper process compel him to produce the same.

Court to com-
pel will to be
produced.

SEC. 18. If the executors named in any will, shall all refuse the executorship, or being required to give security as hereinafter mentioned, shall refuse or fail to give the same, which shall amount to a refusal of the executorship, in either case the court having jurisdiction as aforesaid, may receive the proof of the will, and grant a certificate for obtaining letters of administration with the same annexed to the person to whom administration would have been granted if there had been no will of the deceased.

If executor re-
fuse to act who
to administer.

SEC. 19. Before granting a certificate of the probat of any will, the executor or administrator with the will annexed, as the case shall be, shall in open court take the following oath, to wit: "You shall swear that this writing contains the true last will of the within named

Executor or ad-
ministrator to
take oath.

as far as you know or believe; and that you will well and truly perform the same by paying first his debts, and then the legacies contained in the said will, as far as his goods, chattels, and credits will extend, and the law charge you; and that you will make a true and perfect inventory of all the said goods, chattels and credits; as also a just account when thereto required;" and shall also give bond in such penalty as will be equal to the full value of the estate at the least, and with such security as shall be approved of by the court, with the follow-

The form.

And give bond.

1797.

The form.

ing condition, to wit: "The condition of this obligation is, that if the said executor of the last will and testament (or administrator) with the will annexed, of all the goods, chattels and credits of deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have, or shall come to the hands, possession or knowledge of the said or into the hands or possession of any other person or persons for him; and the same so made do exhibit into the court at such time as he shall be thereto required by the said court; and the same goods, chattels and credits do well and truly administer according to law, and make a just and true account of all his actings and doings therein, when thereunto required by the said court; and further, do well and truly pay and deliver all the legacies contained and specified in the said will, as far as the said goods, chattels and credits will extend according to the value thereof, and as the law shall charge him; then this obligation to be void, or else to remain in full force."

Bond, to whom payable.

SEC. 20. Which bond shall be payable to the justices sitting in court, and their successors, and shall not become void upon the first recovery; but may be put in suit and prosecuted from time to time, by and at the costs of any party injured by a breach thereof, until the whole penalty be recovered thereupon.

No security to be required of executor, if so ordered in the will. Exceptions.

SEC. 21. But where any testator shall leave visible estate more than sufficient to pay all his debts, and by will shall direct that his executors shall not be obliged to give security, in that case no security shall be required unless the court shall see cause from their own knowledge, or the suggestions of creditors or legatees to suspect the executors of fraud, or that the testator's personal estate will not be sufficient to discharge all his debts, and shall require security when the same shall be given, before a certificate shall be granted, notwithstanding any directions to the contrary in the testator's will.

Power of executor before probat.

SEC. 22. The power of executors over their testator's estate before probat of the will is not hereby restrained, but shall continue as heretofore.

Persons appointed to collect and preserve the estate.

SEC. 23. During any contest about a will, or in the absence of executors, or whenever the court from any other cause shall judge it convenient, they may appoint

any person or persons to collect and preserve the estate of any decedent until a probat of his will or administration of his estate be granted, taking bond and security for collecting the estate and making an inventory thereof, and safe-keeping and delivering up the same when required to the executors or administrators.

1797.

SEC. 24. When any widow shall not be satisfied with the provision made for her by the will of her husband, she may, within one year from the time of his death, before the court having jurisdiction of the probat of his will as aforesaid, or by deed executed in the presence of two or more creditable witnesses, declare that she will not take or accept the provision made for her by such will, or any part thereof, and renounce all benefit which she might claim by the same will; and thereupon such widow shall be entitled to one third part of the slaves whereof her husband died possessed; which she shall hold during her life, and at her death they and their increase shall go to such person or persons to whom they would have passed and gone if such declaration had not been made; and she shall moreover be entitled to such share of his other personal estate as if he had died intestate, to hold to her as her absolute property: but every widow not making a declaration within the time aforesaid, shall have no more of her husband's slaves and personal estate than is given her by his will.

Widow may renounce provision of will.

Her legal provision in such cases.

SEC. 25. And that if any widow possessed of a slave or slaves, as of the dower of her husband, shall remove, or voluntarily permit to be removed out of this commonwealth, such slave or slaves, or any of their increase, without the consent of him or her in reversion, such widow shall forfeit all and every such slave or slaves, and all other the dower which she holds of the endowment of her husband's estate, unto the person or persons that shall have the reversion thereof; any law, custom, or usage to the contrary notwithstanding.

Penalty for removing property out of the state, &c.

SEC. 26. And if any widow possessed as aforesaid, shall be married to a husband who shall remove, or voluntarily permit to be removed out of this commonwealth any such slave or slaves, or any of their increase without the consent of him or her in reversion, in such case it shall be lawful for him or her in reversion, to enter into, possess and enjoy all the estate which such husband

And on her husband's removing slaves, &c.

1797.

holdeth in right of his wife's dower, for and during the life of the said husband.

Original wills
to be recorded.

SEC. 27. All original wills shall be recorded, and shall also remain in the clerk's office of the court where- in they are respectively proved, except during such time as they may be in any superior court, having been removed thither for inspection by *certiorari*, or other- wise, after which they shall be returned to the said office.

How distribu-
tion to be made

SEC. 28. When any person shall die intestate as to his goods and chattels, or any part thereof, after the fu- neral debts and just expences paid, if there be no child, one moiety, or if there be a child or children, one-third of the surplus shall go to the wife : but she shall have no more than the use for her life of such slaves as shall be in her share, and the residue of the surplus ; and after the wife's death, the slaves in her share, or if there be no wife, then the whole of such surplus shall be distributed in the same proportions, and to the same persons as lands are directed to descend in and by an act of general as- sembly, entitled, " an act directing the course of de- scents." Nothing in this act contained shall be under- stood so as to compel the husband to make distribution of the personal estate of his wife dying intestate. Where any children of the intestate, or their issue, shall have received from the intestate in his life-time, any personal estate by way of advancement, and shall choose to come into the distribution with the other persons entitled, such advancement shall be brought into hotchpot with the dis- tributable surplus.

Jurisdiction of
courts in deter-
mining rights
of administra-
tion, &c.

SEC. 29. The several courts respectively shall have the like jurisdiction to hear and determine the right of ad- ministration of the estates of persons dying intestate, as is hereinbefore mentioned, as to the proof of wills in res- pect to the intestate's place of residence or death, or where the estate shall lie, and shall grant certificates for obtaining such administration to the representatives who apply for the same, preferring first the husband or wife, and then such others are next entitled to distribution, or one or more of them as the court shall judge will best manage and improve the estate.

If no person ap-
plies within 30
days may grant
administration
to creditor.

SEC. 30. If no such person applies for administration within thirty days from the death of an intestate, the court may grant administration to any creditor or credi- tors who apply for the same, or to any other person the

hotch pot

hotch pot

court shall in their discretion think fit: but if any will shall afterwards be produced and proved by executors or the wife or other distributee who shall not have before refused shall apply for administration, the same shall be granted in like manner as if the former had not been obtained.

1797.

SEC. 31. Before granting a certificate for the administration of any estate, the person or persons to whom the same is granted shall, in open court, take the following oath, to wit: "You shall swear that deceased, died without any will, as far as you know or believe, and that you will well and truly administer all and singular the goods, chattels and credits of the said deceased, and pay his debts as far as his goods, chattels and credits will extend, and the law require you, and that you will make a true and perfect inventory of all the said goods, chattels and credits, as also a just account when thereunto required, so help you God."

Administrator
to take oath.

Form.

SEC. 32. And shall also give bond in a penalty at least equal to the value of the estate, and with such security as shall be approved by the court, with the following condition, to wit: "The condition of this obligation is, that if the said administrator of the goods, chattels and credits of deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said or in the hands or possession of any other person or persons for and the same so made do exhibit into the court when he shall be thereto required by the said court; and such goods, chattels and credits, do well and truly administer, according to law; and further, do make a just and true account of his actings and doings therein, when thereto required by the said court; and all the rest of the said goods, chattels and credits, which shall be found remaining upon the account of the said administrator, the same being first examined and allowed by the justices of the said court for the time being, shall deliver and pay unto such persons respectively, as are entitled to the same by law; and if it shall hereafter appear that any last will and testament was made by the deceased, and the same be proved in court, and the executor obtain a certificate of the probat thereof, and the

Give bond.

Form of con-
dition.

1797. said do in such case being required, render and deliver up his letters of administration, then this obligation to be void, else to remain in full force."
- Bond to whom payable. Which bond shall be payable to the sitting justices and their successors, and may be put in suit and prosecuted in like manner as is before directed in the case of bonds to be given by executors or administrators with the will annexed.
- Security of executor, &c how far chargeable. SEC. 33. But no security for any executor or administrator shall be chargeable beyond the assets of the testator or intestate, by reason of any omission or mistake, in pleading or false pleading, of such executors or administrators.
- Justices chargeable if they take insufficient security. SEC. 34. If any court shall grant a certificate for obtaining administration of the estate of any person deceased, without taking good security for the same as aforesaid, to be adjudged of according to the apparent circumstances of the security when taken, and not from subsequent accidents or discoveries thereof, the justices of such court then sitting shall be answerable to the person or persons injured, for all loss or damage occasioned by the not requiring any, or by the taking insufficient security, recoverable with costs by action on the case in any court of record.
- Security of executor, &c. in danger of suffering, how to be relieved. SEC. 35. When securities for executors or administrators conceive themselves in danger of suffering thereby, and petition the court for relief, the court shall summon the executor or administrator, and make such order or decree thereupon to relieve and secure the petitioners by counter-security or otherwise, as to them shall seem just and equitable.
- Clerk's certificate good evidence of executorship. SEC. 36. All certificates of probate or of administration attested by the clerk, shall enable the executor or administrator to act, and may be produced or given in evidence in any court within this commonwealth, and be as effectual as any probat or letters of administration made out in due form; nevertheless the clerks of the courts shall when required by an executor or administrator, make out such probat or letters in due form, in the name of the first justice of the court; which probat or letters shall be signed by such justice, and sealed with the county seal.
- Court to appoint appraisers. SEC. 37. Every court granting a certificate for a probat or administration, shall nominate three or more ap-

praisers in every county where any personal estate of the decedent shall be, who being sworn before a justice of the peace for that purpose, shall truly and justly to the best of their judgment, view and appraise all the personal estate to them produced, and shall return such appraisement under their hands to the court ordering the same; which appraisement if signed by the executor or administrator, may be considered as an inventory of such part of the estate as had theretofore come to his hands.

1797.

Who shall re-
turn their ap-
praisement to
court.

SEC. 38. Inventories and appraisements may be given in evidence in any suit by or against the executor or administrator, but shall not be conclusive for or against him, if other testimony be given that the estate was really worth, or was *bona fide* sold for more or less than the appraisement.

Appraisement
how far evi-
dence for or a-
gainst executor

SEC. 39. Each appraiser shall be entitled to thirty pounds of tobacco per day for his attendance, to be paid by the executor or administrator, and charged to the estate.

Appraiser's fee.

SEC. 40. Executors and administrators, whether it be necessary for payment of debts or not, shall as soon as convenient after they are qualified, sell at public sale all such goods of their testator or intestate, specific legacies excepted, as are liable to perish, be consumed, or rendered worse by keeping, giving such credit as they shall judge best, and the circumstances of the estate will admit of, taking bond and good security of the purchasers; and shall account for such goods according to the sales. If more be sold than will pay the debt and expences, the executor or administrator may assign the bonds for the surplus to those entitled to the estate, and be discharged as to so much.

Executor's duty
in making sale
of personal es-
tate.
Perishable
goods to be first
sold.

SEC. 41. If such perishable goods be not sufficient for paying the debts and expences, the executor or administrator shall proceed in the next place to sell the other personal estate, disposing of the slaves last, until the debts and expences be all paid, having regard to the privilege of specific legacies.

In what case
the rest of per-
sonal estate may
be sold.

SEC. 42. Nevertheless if the testator direct his estate not to be appraised, it shall be sufficient to return an inventory thereof only; and if he directs his estate not to be sold, the same shall be preserved in specie, unless a sale be necessary for the payment of debts.

Estate not to be
appraised if tes-
tator so direct.

SEC. 43. The dead victuals and liquors which at the

1797.

Dead victuals
and liquors to
remain for the
use of the fam-
ily.

Live stock may
be killed for
family use.

Executors to
sell lands de-
vised to be sold,
&c.

How the slaves
&c. employed
in making a
crop shall be
disposed of.

Emblements
when to be af-
fected, and when
not.

death of any testator or intestate, shall have been laid in for consumption in his family, shall not be sold by the executor or administrator, but shall remain for the use of such family without account thereof to be made : if, however, before its final consumption any child shall leave the family, such child shall have a right to carry with him an equal share of what shall then be on hand. Any live stock which may be necessary for the food of the family may also be killed for that use at any time before the sale, division or distribution of the estate.

SEC. 44. The sale and conveyance of lands devised to be sold shall be made by the executors, or such of them as shall undertake the execution of the will, if no other person be thereby appointed for that purpose ; or if the person so appointed shall refuse to perform the trust or die before he shall have completed it.

SEC. 45. If any person shall die after the first day of March, the servants and slaves of which he was possessed, whether held for life or for other interest, and which were employed in making a crop, shall be continued on the plantation in the occupation of the decedent until the last day of December following, and then delivered to those who shall have a right to demand the same ; and their crops shall be assets in the hands of the executors and administrators, subject to debts, legacies and distribution, the levies and taxes, their tools, the expence of feeding them and their families to that time, and delivering them well clothed, being first deducted ; and if such servants or slaves be held by the testator or intestate for his life only, in that case the executor or administrator shall be obliged to deliver to those who are entitled in remainder or reversion, three barrells of Indian corn for every such servant or slave old and young, to be allowed in their accounts of administration.

SEC. 46. If a testator or intestate shall die after the first day of March, all the emblements of his lands which shall be severed before the thirty-first day of December following, shall in like manner be assets in the hands of the executors or administrators : but all such emblements growing on the lands on that day or at the time of the death of the testator or intestate, if that event happen after the thirty-first day of December and before the first day of March, shall pass with the land to the heir, devisee, reversioner or remainder man.

V. YEAR OF THE COMMONWEALTH.

628

SEC. 47. If there be a tenant for life of lands or slaves, let or hired to another, at the death of such tenant for life, if that event happen after the first day of March, the lessee, or person hiring, shall hold the lands and slaves until the last day of December following, paying rent or hire to that time, and in the case of slaves, delivering them well clothed.

1797.

How slaves, &c. held for life shall be disposed of.

SEC. 48. The rent of lands or hire of slaves shall be apportioned between the executor or administrator of him who having a freehold, or other uncertain estate in the land, and the use for life, or for other uncertain term in the slaves, shall die before the rent or hire become due, and him who shall succeed to the land and slaves as heir, devisee or person in reversion or remainder, unless in the case of a devisee the contrary be directed by the testator.

How rent of land, &c. to be apportioned between executor and reversioner.

SEC. 49. The appointment of a debtor executor shall in no case be deemed an extinguishment of the debt, unless it be so directed in the will.

SEC. 50. No distribution shall be made of the intestate's estate until nine months after his death; nor shall an administrator be compelled to make distribution at any time until bond and security be given by the person entitled to distribution, to refund due proportions of any debts or demands which may afterwards appear against the intestate, and the costs attending the recovery of such debts.

When and upon what terms distribution to be made.

SEC. 51. Executors and administrators shall be allowed in their accounts all reasonable charges and disbursements, which they shall lay out and expend in the funeral of the deceased, and other their administration, and in extraordinary cases may be allowed such recompence for their personal trouble as the court, on passing their accounts shall judge reasonable.

Allowance to executors, &c.

SEC. 52. The executors or administrators of a guardian, of a committee, or of any other person who shall have been chargeable with, or accountable for the estate of a ward, an idiot or lunatic, or the estate of a dead person, committed to their testator or intestate by a court of record, shall pay so much as shall be due from their testator or intestate to the ward, idiot or lunatic, or to the legatees or persons entitled to the distribution before any proper debt of their testator or intestate.

Executors of guardian, committee of an idiot, &c. how they shall pay debts &c.

SEC. 53. Where any person shall die seized of lands

1797.

Tenant *per. au-*
are *via* dying,
may devise the
residue of the
term.

To whom the
land shall pass.

For what exe-
cutors &c. may
sue or be sued.

In what cases
actions of tres-
pass may be
maintained.

Power and du-
ty of executors
of executors.

If executors
refuse to act,
&c. sheriff to
take charge of
the estate.

His duty.

held for life of another, such person may by his or her last will and testament in writing made and proved, as is herein before directed for the devise of lands, devise all his interest in such lands, which shall, if necessary, be assets in the hands of such devisee; and if no such devise be made, such lands for the residue of the term shall be assets in the hands of the heir, if it shall come to him by reason of a special occupancy in the same manner as lands descending in fee simple; and if there shall be no special occupant, it shall go to the executors or administrators of the person so dying seized, and be assets in their hands subject to debts, legacies, and distribution.

SEC. 54. Executors or administrators may sue or be sued upon all judgments, bonds, or other specialties, bills, notes, or writings of their testators or intestates, whether the executors or administrators be, or be not named in such instruments, and also upon all their personal contracts.

SEC. 55. Actions of trespass may be maintained by or against executors or administrators for any goods taken and carried away in the life time of the testator or intestate; and the damages received shall be in the one case for the benefit of the estate, and in the other out of the assets.

SEC. 56. Executors of executors shall do and perform all things in the execution of the will of the first testator, which shall remain undone at the death of the first executor, and shall and may sue or be sued in all things respecting the estate, in the same manner as such first executor could or might have sued, or been sued.

SEC. 57. If all the executors named in any last will shall refuse to undertake the executorship, or being required to give security, shall refuse to give, or be unable to procure the same, and no person will apply for administration with the will annexed, or if no person will apply for the administration of the goods and chattels of any intestate, it shall be lawful for the court having jurisdiction of such probat or administration as herein before mentioned, after the expiration of three months from the date of the death of the testator or intestate, to order the sheriff of the county to take the estate into his possession, and make sale of so much thereof by public auction as the payment of debts shall make necessary, or as shall be perishable, or be directed by will to be sold.

And all sales and conveyances *bona fide* made by the sheriff or his deputies, in consequence of such order, shall be as effectual to the purchasers, as if they had been made by the testator or intestate in his life time. The estate shall be sold upon such credit as the court shall direct, and upon public notice being previously given, the purchasers giving bond and good security for payment according to the limited time of credit. The sheriff may sue, if necessary, for the recovery of debts, or of goods and chattels, and shall make a true and perfect inventory of the whole estate, and an account of sales, and shall return the same, together with the bonds, to the court by whom he was ordered to sell without delay, who shall first direct the payment of such debts as shall be proved before them, and proportion the assets among the creditors, without regard to the dignity of debts, where there shall not be sufficient to pay the whole, and then order the surplus, if any, to the legatees, or next of kin to the decedent, according to the direction of the will, or of this act. Whereupon the sheriff or deputy shall assign the bonds, and deliver the estate remaining unsold, to the creditors or others according to such order; retaining, nevertheless, his commissions, which shall be the same upon the estate by him sold, as is allowed for goods taken in execution: and where the whole estate is not sold, he shall moreover be allowed his reasonable expences and disbursements in the care of the part unsold.

1797.

Further powers
and duties,

SEC. 53. All sales and conveyances of lands hitherto *bona fide* made by a sheriff under an order of court, where the lands had been directed to be sold, and the executor had refused to act, are hereby confirmed and made effectual against all persons claiming under the testator.

Sales confirm-
ed.

CHAPTER CCXCIV.

An ACT to amend an act entitled "an act for establishing Towns."

Approved February 24, 1797.

See the prelection to chapter 269.

BE it enacted by the general assembly, That it shall be lawful for the inhabitants of all towns heretofore established by any special act of the legislature, and which are

1797.

not otherwise provided for by law, to elect their trustees in like manner as is allowed the inhabitants of towns that may be established by the authority of an act, entitled, "an act for establishing towns;" and the trustees of said towns shall possess the same powers as trustees of towns established by the said recited act.

This act shall commence and be in force from the passage thereof.

CHAPTER CCXCV.

An ACT containing so much of every act or acts as ascertains the boundary of the State, and of the several Counties.

Approved February 25, 1797.

October 1776.
Page 52.

Boundary of
Kentucky.

FROM and after the last day of December next ensuing, the said county of Fincastle shall be divided into three counties; that is to say, all that part thereof which lies to the south and westward of a line beginning on the Ohio, at the mouth of Great-Sandy creek, and running up the same and the main or north-easterly branch thereof to the Great-Laurel ridge, or Cumberland mountain; thence south-westerly along the said mountain to the line of North-Carolina, shall be one distinct county, and called and known by the name of Kentucky.

May 1780.
Page 45.

Jefferson.

From and after the first day of November next, the said county of Kentucky shall be divided into three counties, that is to say, all that part of the south side of Kentucky river, which lies west and north of a line beginning at the mouth of Benson's big creek, and running up the same and its main fork to the head; thence south to the nearest waters of Hammond's creek, and down the same to its junction with the town fork of Salt river; thence south to Green river, and down the same to its junction with the Ohio, shall be one distinct county, to be called and known by the name of Jefferson.

Fayette.

And all that part of the said county of Kentucky which lieth north of the line, beginning at the mouth of the Kentucky river, and up the same to its middle fork to the head; and thence south-east to Washington line, shall be one other distinct county, and called and known by the name of Fayette. And all the residue of the said county of Fayette shall be one other distinct county, and called and known by the name of Lincoln.

Lincoln.

V. YEAR OF THE COMMONWEALTH.

627

From and after the first day of January next, the county of Jefferson shall be divided into two distinct counties by Salt river, and all that part of the said county lying south of the said river, shall be called and known by the name of Nelson, and all the residue of the said county shall retain the name of Jefferson.

1797.

October 1784.
Page 13, chap.
62.
Nelson.

From and after the first day of May, one thousand seven hundred and eighty-six, the county of Fayette shall be divided into two distinct counties, that is to say, so much of the said county within the following lines: Beginning at the mouth of upper Howard's creek on Kentucky river, running up the main fork thereof to the head: thence with the Dividing Ridge between Kentucky and Licking creek, until it comes opposite to the head of Eagle creek; from thence a direct line to the nearest part of Raven creek, a branch of Licking, down Raven creek to the mouth thereof; thence with Licking to the Ohio; thence with the Ohio to the mouth of Sandy creek, up Sandy creek to the Cumberland mountain; thence with the said mountain to the line of Lincoln county; thence with that line, and down the Kentucky river to the beginning, shall be one distinct county, and called and known by the name of Bourbon. And the residue of the said county shall retain the name of Fayette.

1785, page 22,
chap. 37.

Bourbon.

From and after the first day of August next, the county of Lincoln shall be divided into three distinct counties, that is to say: so much of the said county bounded by a line beginning at the confluence of Sugar creek and Kentucky river; thence a direct line to the mouth of Clark's run; thence a straight line to Wilson's station in the fork of Clark's run; thence the same course continued to the line of Nelson county; thence with the said line to the line of Jefferson county; thence with that line to the Kentucky river; thence up the said river to the beginning, shall be one distinct county, and called and known by the name of Mercer; that such farther parts of the said county within the following lines, to wit: beginning at the confluence of the Kentucky river and Sugar creek; thence up the said creek to the fork James Thompson lives on; thence up the said fork to the head thereof; thence a straight line to where an east course from John Ellis's will intersect the top of the ridge that divides the waters of Paint lick from the wa-

1785, page 38,
chap. 44.

Mercer.

Madison.

1797.

ters of Dick's river ; thence along the top of said ridge southwardly opposite to Hickman's lick ; thence south forty-five degrees east to the main Rock-Castle river ; thence up the said river to the head thereof ; thence with the ridge that divides the waters of Kentucky river from the waters of Cumberland river to the line of Washington county ; thence along the said line to the main fork of Kentucky river that divides the county of Fayette from the county of Lincoln ; thence down the said river to the beginning, shall be one other distinct county, and called and known by the name of Madison. And all the residue of the said county shall retain the name of Lincoln.

1788, page 6,
chap. 4.

Mason.

From and after the first day of May next, the county of Bourbon shall be divided into two distinct counties, that is to say : all that part of the said county lying north-east of a line to begin at the junction of Licking with the Ohio ; thence up the main creek of Licking to the head thereof ; thence a direct line to strike the nearest part of Russell county line ; thence along the said line to Big Sandy, and down the same to the Ohio ; thence down the Ohio river to the beginning, shall be one distinct county, and called and known by the name of Mason. And the residue of the said county shall retain the name of Bourbon.

1788, page 8,
chap. 10, sec. 1

Woodford.

From and after the first day of May next, the county of Fayette shall be divided into two distinct counties, that is to say : all that part of the said county lying westward of a line to begin one mile and a half above Todd's ferry, on Kentucky river ; thence a direct line to the eight mile tree, on the Lees-town road ; thence a direct course crossing the north fork of Elkhorn, four miles on a straight line below William Russell's ; thence the same course continued to the line of Bourbon county ; thence with Bourbon line to the mouth of Licking ; thence down the Ohio to the mouth of Kentucky river ; thence up the river to the beginning, shall be one distinct county, and called and known by the name of Woodford. And the residue of the said county shall retain the name of Fayette.

June 1792,
page 4, ch. 2

Washington.

From and after the first day of September next, the county of Nelson shall be divided into two distinct counties, that is to say : all that part of the said county included within the following bounds, to wit : beginning on Salt river where the boundary line between Nelson

V. YEAR OF THE COMMONWEALTH.

629.

and Mercer crosses the same ; thence down the same river to the mouth of Crooked creek, or what is called by some Lewis's run ; thence a straight line to the mouth of Beaver creek, a branch of Chaplain's fork ; and thence down Chaplain's fork to the Beech fork ; thence down the Beech fork to the mouth of Hardin's creek ; thence a straight line to the Big Knob lick, near the head of Pottinger's creek ; thence a straight line to the mouth of Salt Lick run, emptying into the Rolling fork on the south side ; thence up the main branch of the said run to the ridge dividing the waters of the Rolling fork from Green river waters ; thence eastwardly along the said dividing ridge to the line dividing Lincoln from Nelson ; thence with the same to the Mercer line ; thence along the line between Nelson and Mercer to the beginning, shall be one distinct county, and called and known by the name of Washington. And all the residue of the said county retain the name of Nelson.

1797.

From and after the first day of September next, the county of Woodford, shall be divided into two distinct counties, that is to say, all that part of the said county included within the following bounds, to wit : Beginning on the town of Elkhorn where the line between Woodford and Fayette crosses the same ; thence down the said creek to its junction with the south fork ; thence down the same so far that a line north twenty degrees west will strike the eight mile tree on the road leading from Frankfort to Georgetown ; thence a straight line to intersect the Big-Buffaloe road between the head of Cedar creek and Lecompt's run ; thence a straight line to the Ohio river at the mouth of Big-Bone Lick creek ; thence up the Ohio to the mouth of Licking ; thence up Licking creek to the mouth of Raven creek ; thence up the same along the line of Bourbon, and with the said Bourbon line to the Fayette line ; thence south-westwardly along the same to the beginning, shall be one distinct county, and called and known by the name of Scott. And all the residue of the said county retain the name of Woodford.

June 1792.
Page 4, ch. 3.
sec. 1.

Scott.

From and after the first day of September next, the county of Jefferson shall be divided into two distinct counties, that is to say, all that part of the said county including the following bounds, to wit : Beginning on Salt river at the mouth of Plum creek, running thence a

June 1792.
Page 17, ch. 9.
sec. 1.

Shelby.

1797

course that will strike Benjamin Huse's, near Boon's road, and continuing the same course to a point, that by running north forty five degrees west, will strike the Ohio at the mouth of Eighteen-Mile creek; thence up the Ohio to the mouth of Kentucky river; thence up the same to the mouth of Benson's creek; thence up the same along the Mercer line, and with the same to Salt river; thence down the same to the beginning, shall be one distinct county, and called and known by the name of Shelby, and all the residue of the said county retain the name of Jefferson.

June 1792.
Page 19, ch. 12
sec. 1.

Logan.

From and after the first day of September next, the county of Lincoln shall be divided into two distinct counties, that is to say, all that part of the said county included in the following bounds, to wit: Beginning at the Elk-Lick on Little-Barren river; thence a south course to the North-Carolina line; thence along the said line to the Mississippi; thence up the same to the mouth of the Ohio, and up the same to the mouth of Green river; thence up the same to the mouth of Little Barren river; thence up the same to the beginning, shall be one distinct county, and called and known by the name of Logan, and all the residue of the said county shall retain the name of Lincoln.

Novem. 1792.
Page 19, ch. 12
sec. 1.

Clark.

From and after the first day of February next, all that part of the counties of Fayette and Bourbon that is included in the following bounds, to wit: beginning at the mouth of Boon's creek, on the Kentucky river; thence up the same to the mouth of Welch's fork; thence a direct line to the Bourbon line, such a course as will leave the house of John M'Creary, sen. one quarter of a mile to the westward; thence a straight line to Stoner's fork of Licking; such a course as will leave Bourbon court-house eleven miles from the nearest part of said line; thence a straight line to the line of Mason county, so as to leave the Blue Licks two miles to the north-west thereof; thence up the main branch of Licking, along the line of Mason county to the head thereof, and along the said line a direct course from the head of Licking to strike the nearest part of Cumberland Mountain; thence along the said mountain southwardly to the present line of Bourbon county at the head of Kentucky; thence down the same to the beginning, shall be one distinct county, and called and known by the name of Clark.

V. YEAR OF THE COMMONWEALTH.

631

From and after the twentieth day of February next, all that part of the county of Nelson included within the following bounds, to wit : beginning on Green river opposite the mouth of Little Barren river ; thence a straight line such a course as will strike a point on the dividing ridge between Linn Camp and Brush creek, a west course from Skegg's station on Brush creek ; thence a straight line to the south-west corner of Washington county, on the head of Salt lick creek ; then down the same to the Rolling fork of Salt river ; thence down the same, and down Salt river to the Ohio ; thence down the Ohio to the mouth of Green river ; thence up Green river to the beginning, shall be one distinct county, and called and known by the name of Hardin.

1797

Novem. 1792.
Page 22, ch. 17,
sec. 1.

Hardin.

From and after the first day of January next, all that part of the counties of Lincoln and Nelson included within the following bounds, to wit : beginning on Green river, opposite the mouth of Little Barren river ; thence a straight line such a course as will strike a point on the dividing ridge between Linn camp and Brush creek, a west course from Skegg's Station on Brush creek ; thence a straight line to the south-west corner of Washington county ; thence along the same to the line of Lincoln county ; thence west with the same to Green river ; thence a line south forty-five degrees east to the Carolina boundary ; thence with the same to Logan county line ; thence with the line of Logan county to the Elk lick, on Little Barren river ; thence down the said river to the beginning shall be one distinct county, and called and known by the name of Green.

Novem. 1792.
Page 46, ch. 44,
sec. 1.

Green.

From and after the first day of February next, all that part of the counties of Bourbon and Scott that is included in the following boundary, to wit : beginning at the Blue Lick fork of Licking at that point from whence a line parallel with the line of Clark county will strike a point to be found eight miles at due north course from Bourbon court-house ; thence a line to the mouth of Townsend creek, and up the same to the mouth of Silas's run ; thence up the main branch of said run to the head thereof ; thence with Scott county line so far as it continues on the dividing ridge ; thence with the said ridge to a parallel with the head of the South fork of Big Lick creek, and down said fork to the south fork of Licking ; thence down the said fork to the mouth thereof ;

1793, page 29,
ch. 24, sec. 1.

Harrison.

1797.

thence up the said Blue Lick fork to the beginning :
 Provided also, and it is to be understood, that the county of Bourbon shall not be less than nineteen miles wide in the narrowest place ; shall be one distinct county, and called and known by the name of Harrison.

1794, page 19,
 ch. 13, sec. 1.

Franklin.

From and after the tenth day of May next, all those parts of the counties of Woodford, Mercer and Shelby, within the following bounds, to wit : beginning at the Scott line where it leaves the south fork of Elkhorn ; thence a straight line to strike the Kentucky river, and crossing the same one mile above the mouth of Glenn's creek ; thence up the Kentucky to the mouth of the Cove Spring branch, on the south side thereof ; thence up the said branch to the Cove Spring ; thence west to Washington line ; thence with the same down Salt river to the mouth of Crooked creek ; thence up the main fork of Crooked creek to the head thereof ; thence with the dividing ridge to the junction of the forks of Benson ; thence down Benson to where the old waggon road from Boon's old station to Harrodsburgh, crosses at the mouth of the most northerly fork of Benson ; thence a direct line to the mouth of Elkhorn ; thence down the Kentucky to the mouth thereof ; thence up the Ohio to the Scott line ; thence with the said line to the beginning, shall be one distinct county, and called and known by the name of Franklin.

1794, page 27,
 ch. 19.

Campbell.

From and after the tenth day of May next, all those parts of the counties of Harrison, Scott and Mason within the following bounds, to wit : beginning on the Ohio at the mouth of Locust creek on the lower side thereof ; thence a direct line to the mouth of the north fork of Licking ; thence by a direct line to the mouth of Crooked creek, on the south fork of Licking ; thence up said Crooked creek to the head of the main branch thereof ; thence west to the dividing line between the counties of Scott and Woodford ; thence along that line to the mouth of Big Bone lick creek, on the Ohio river ; thence up the Ohio river to the beginning, shall be one distinct county, and be called and known by the name of Campbell.

V. YEAR OF THE COMMONWEALTH.

633

CHAPTER CCXCVI.

1797.

An ACT concerning Public Roads.

Approved February 25, 1797.

This is little more than a transcript of an act of 1785. That act contains no repealing clause, nor does this. An act of 1748, requires that all roads passing to or from the court house of every county, and all public mills and ferries, now made, or hereafter to be made, shall, at all times be kept well cleared from woods, bushes, and other obstructions, and all roots well grubbed up thirty feet wide.

The present act was amended by one passed in 1803, (Vol. III. chap. 100,) and one passed in 1804, (Vol. III. chap. 265.)

SECTION 1. *Be it enacted by the general assembly,* That when any person or persons shall make application to any county court to have a new road opened, or a former one altered within their county for the convenience of travelling to their county court house, or to any public ware-house, landing, ferry, mill, lead or iron-works, or the seat of government, they shall appoint three or more fit and able persons to be sworn before a justice of the peace to view the ground along which such road is proposed to be conducted, and to report to them truly and impartially, the conveniences and inconveniences which will result as well to individuals as to the public if such way shall be opened; and where the application is to alter a former road, they shall also view the former road, and report in like manner the comparative conveniences and inconveniences thereof.

On application to the court to open a road, they shall appoint viewers.

Their duty.

SEC. 2. Upon the return of the said viewers, if the court shall be of opinion that the road applied for will be convenient, they shall order summonses to be issued to the proprietors and tenants of the land through which the same is proposed to be conducted if they be found within the county; and if not, then to their agents therein, if any they have, to shew cause why such road should not be opened: upon the return of which summons, if any proprietor or tenant so desire, the said court shall order their clerk to issue a writ in the nature of a writ of *ad quod damnum*, to be directed to the sheriff, commanding him to summon and empanel twelve able and discreet freeholders of the vicinage, no ways related to either party, to meet at some certain place on the ground through which the said road is proposed to be conducted, and on a certain day to be named by the court, and inserted in the said writ, of which notice shall be given by the she-

Summonses to issue.

Who may have a writ of *ad quod damnum*.
Proceedings under said writ.

1797.

Charge to be
given to the
jurors by the
sheriff.

Inquest return-
ed sealed.

Court shall levy
the damages on
the county.

Surveyors to
be appointed.

Their duty.

Who bound to
work on roads.

Penalty for not
attending.

riff to the proprietors or tenants, or their agents, as before directed, if they were not present in the court at the time of the order made, which free-holders (taking nothing on pain of being discharged from the inquest, and immediately imprisoned by the sheriff) either of meat or drink from any person whatever, from the time they shall come to the said place, until their inquest sealed, shall be charged by the said sheriff impartially, and to the best of their skill and judgment, to view the lands through which the said road is proposed to be conducted, and say to what damage it will be of to the several respective proprietors and tenants who desired such writ, taking into estimation as well the use of the lands to be laid open for such road as the additional fencing which will be thereby rendered necessary. And if the said inquest cannot be completed in one day, the sheriff shall adjourn the said jurors from day to day until the same be completed; which inquest, sealed by the said jurors, together with the writ, shall be returned to the court, who thereupon as well as upon other evidence, shall proceed to consider whether, all circumstances weighed, it be better that the said road shall be opened: and if they be of opinion that the same shall be opened, they shall levy on their county at the next levy to be laid, the damages so found, and the costs of the inquest, and direct them to be paid to those respectively entitled thereto: but if they be of opinion that the said road ought not to be opened, the costs of such inquest shall be adjudged against the party applying for the said road; but it shall not be lawful for any court to order a road to be opened through any lot of land in any town, without the consent of the owner or tenant thereof.

SEC. 3. The several courts shall also divide all the public roads into precincts, and as often as it shall be necessary, appoint a surveyor over every precinct, whose duty it shall be to superintend the road in his precinct, and see that the same be cleared and kept in good repair; which surveyor shall continue in office until another shall be appointed by the said court in his stead.

SEC. 4. All male labouring persons of the age of sixteen years or more, except such as are masters of two or more male labouring slaves, of the age of sixteen years or more, shall be appointed by the court to work on some public road; for every person so appointed who when

required by the surveyor placed over him, shall, without legal cause or disability, fail to attend with proper tools for clearing the road, or shall refuse to work when there, or to find some other person equally able to work in his room, the sum of seven shillings and six pence for every day's offence, shall be paid by himself if a free man of full age, if an infant then by his parent, guardian or master, or if a slave or servant then by his overseer, if he be under one, or otherwise by his master, to be recovered by the overseer of the road, before any justice of the peace within his county, one half to the use of such overseer, and the other to be applied to the further improvement of the road.

1797.

How to be recovered and applied.

SEC. 5. The clerk of every county court shall, within ten days after the appointment of any surveyor of a road, deliver a copy of the order to the sheriff of the county, under the penalty of fifteen shillings; and the sheriff, within fifteen days after the receipt of such order, shall deliver the same to the surveyor, with a description of the bounds of his precinct, which includes the tracts over which the surveyor is placed, under the penalty of fifteen shillings: which fines shall be applied towards lessening the county levy, and each clerk shall moreover, once in every year, fix up in the court-house a list of the names and precincts of all the surveyors of roads in his county, under the penalty of fifteen shillings for every neglect; which order he shall produce if called upon for the information of any person named by him to work upon the road. And each clerk and sheriff failing herein shall be moreover liable to the action of any person aggrieved for any damages which he shall sustain in consequence of such failure.

Clerk to deliver to the sheriff, and he to the surveyor a copy of the order appointing him, when under penalty.

Clerk to fix up a list of the names and precincts of the surveyors.

SEC. 6. Every surveyor of a road shall cause the same to be kept well cleared and smoothed, and thirty feet wide at the least; and at the fork or crossing of every public road shall cause to be erected and kept in repair from time to time, a stone, or otherwise an index, or a post or tree, with plain inscriptions thereon in large letters, directing to the most noted place to which each of the said roads shall lead; and may take stone or wood for the purpose from any adjoining land; and for the expense of setting up and inscribing such stones, posts or indexes, and keeping them in repair, the surveyor shall be reimbursed by the county court in their next succeed-

Surveyors shall keep the roads in repair.

And set up directions at cross roads, &c.

1797.

He shall make
and keep in re-
pair bridges and
causeways.

Materials how
to be had.

May impress
waggons &c.

How they and
the materials
shall be paid for.

Court may con-
tract for build-
ing bridges.

Two counties
to join in build-
ing a bridge.

ing levy. And where bridges or causeways are necessary, the surveyor shall cause them to be made twelve feet broad at the least, convenient and safe, and keep the same in repair; and for that purpose may cut and take from the lands of any person adjoining, such and so much timber, earth and stone, as may be necessary, (the same being first viewed and valued by two honest house-keepers, appointed and sworn for that purpose by a justice of the peace) unless the owner shall freely give such timber, stone or earth for that use; but when a road leads through a city or town, the surveyor shall not take any timber, stone or earth, from any lot within the town without the permission of the owner; but shall take the same from the lands nigh or adjacent to the said town, where it will do the least injury to the proprietors; and where the assistance of wheel carriages are necessary for the making and repairing any causeways, any justice of the peace may issue his warrant under his hand and seal, for empowering the surveyor to impress such necessary carriages, draught horses or oxen, with their gear and driver, belonging to any person who, or their servants or slaves, are appointed to work on the road, and appointing two honest house-keepers, who being sworn, shall value by the day the use of such carriages, draught horses, oxen and driver; which valuation with a certificate from the surveyor, how many days the said things were employed in the work, shall entitle the owner to an allowance for the same in the next county levy; and in the like manner shall the owner of timber, stone or earth, taken for bridges or causeways, be entitled to the valuation thereof in the next county levy, upon a certificate from the two house-keepers who valued the same. Every surveyor of a road who fails to do his duty as aforesaid, shall forfeit fifteen shillings for every such offence.

SEC. 7. Where a bridge or causeway shall be necessary, and the surveyor, with his assistants, cannot make or maintain the same, the court of the county are empowered and required to contract for the building and repairing such bridges or causeways, and to levy the charge thereof in their county levy: and where such bridge or causeway shall be necessary from one county to another, the court of each county shall join in the agreement for building and repairing the same, and the

charge shall be defrayed by both counties in proportion to the public tax or assessment paid by each. Upon every such contract or agreement bond and security shall be given by the undertaker, payable to the governor and his successors for the use of the county or counties, as the case may be, with condition for performing the same, and may be prosecuted at the costs and for the benefit of the county or counties, or any person sustaining a loss by a breach thereof as often as it shall happen, until the whole penalty of the bond shall be paid; and all such contracts made by county courts, or others appointed by them, shall be available and binding upon the justices and their successors, so as to entitle the undertaker to his stipulated reward in the county levy, or to a recovery thereof with costs by action of debt against the justices refusing to levy the same.

1797.

Bond, &c. to be given by the undertaker.

Contracts shall bind them and their successors.

SEC. 8. When the justices of one county shall judge a bridge or causeway over any place between them and another county to be necessary, they shall notify the same to the justices of such other county, and require them to appoint three persons to meet at the said place on a certain day to be named by the court, requiring the same to confer with three others to be appointed by the said requiring court, and agree on the manner and condition of executing the same; which six persons, or so many of them as meet, being not fewer than three, shall have power to agree on the manner and conditions of doing the said work, and see that the same be done; and if the court so required shall fail to appoint persons to act on their behalf, or to do what on their part should be done towards executing and paying for the said work, the justices of the said court which made the requisition shall apply to the district court for a writ of *mandamus*, to be directed to the justices of the other court, commanding them to do what on their part they ought to have done and have failed to do, or to signify to them cause to the contrary thereof: upon the return of which writ the district court, if they shall be of opinion that the work is unnecessary, or that other sufficient cause is returned, shall quash the writ, or if they think otherwise, shall cause such further proceedings to be had as are usual in other cases of *mandamus* issuing from the said court; and the like method of proceeding by way of *mandamus* shall be used when the justices of one county shall

Proceedings where a bridge is necessary between two counties.

1797.



think it necessary to open a road to their county line for the convenience of passing to some public place in another, and the justices of such other shall refuse to continue the road through their county.

Felling trees in
a public road,
&c. a nuisance.

SEC. 9. If any person shall fell a tree into a public road, or into any stream of water whereon there shall be any public bridge, and shall not remove the same within forty-eight hours, or shall cut, pull up, destroy or deface any stone or post erected for the direction of travellers, or the indexes or inscriptions thereon, it shall be deemed a nuisance.

Penalty for
such offence.

SEC. 10. Every freeman of full age so offending, or the parent, master or owner of every child, apprentice, servant or slave so offending, with his or her knowledge, shall forfeit and pay ten dollars for every offence; and where any fence shall be made across, or in any public road, the owner or tenant of the land shall pay six shillings for every twenty-four hours the same shall be continued.

Dams to be
kept in repair.

And bridges over
pier-heads,
&c.

Penalty.

SEC. 11. The owner or occupier of every dam over which the public road passes, shall constantly keep such dam in repair at least twelve feet wide at the top through the whole length thereof, and keep and maintain a bridge of like breadth with strong rails on each side of the pier-head, flood-gates, or any waste cut through or round the dam, under the penalty of ten shillings for every twenty-four hours failure; but when a mill-dam shall be carried away or destroyed by tempests or accidents, the owner or occupier thereof shall not be liable to the said penalties from thenceforth until one month after such mill shall have been so repaired as to have ground one bushel of grain.

How applied.

How a delinquent may be
prosecuted.

Penalties recovered in a
certain way how
to be recovered
and applied.

SEC. 12. All penalties in this act not otherwise directed, shall be one moiety to the informer, and the other to the use of the county, recoverable with costs on warrant or action, as the case may be: any justice who upon his own view shall discover a road, bridge, causeway or mill-dam as aforesaid, out of repair, shall issue a warrant against the surveyor or other delinquent, and if no reasonable excuse be made for such default, may give judgment for the penalty and costs not exceeding twenty-five shillings, or such offenders may be presented by the grand jury; in all which cases of conviction on view of a justice, or presentment, or on private information to

justices where there shall be no evidence to convict the offenders but the informer's own oath, the whole penalty shall be to the use of the county towards lessening the levy thereof, and shall be annually collected and accounted for by the sheriff in the same manner as county levies; and to enable the sheriff to make such collection, every justice of the peace immediately on the conviction of any offender when the penalty is to be to the county, shall certify the same to the clerk of his county court, who shall yearly before the first day of March, deliver to the sheriff a list of all the offenders so certified, and of all others convicted in court within one year preceding of any offence against this act.

1797.

SEC. 13. Provided the prosecutions for any offence herein mentioned, shall be commenced within six months after the offence committed, and not after: Provided nevertheless, that the continuance of a fence across, or in a road, shall be considered an offence committed during such continuance.

When prosecutions shall be commenced.

CHAPTER CCXCVII.

An ACT making an additional compensation to the Secretary of State, and certain other Officers of Government.

Approved February 25, 1797.

BE it enacted by the general assembly, That the salary of the secretary of state shall be two hundred pounds annually, including the sum at present allowed him by law: to commence from and after the first day of January last, to be paid in like manner as the salaries of the other officers of the civil list are directed by law. And there shall be allowed to the auditor, register and treasurer, the sum of fifty pounds each in addition to their present salary, to be paid in like manner as the salary now allowed by law, to enable them to employ clerks to assist them in performing the business in their respective offices.

This act shall commence and be in force from the passage thereof.

1797.

CHAPTER CCXCVIII.

An ACT concerning the Town of Frankfort.

Approved February 25, 1797.

Seven trustees to
be elected, by
whom and what
time.

SECTION 1. *BE it enacted by the general assembly,* That it shall be lawful for all freeholders, house-keepers and free male inhabitants of the town of Frankfort, and those within one mile of the public square in the said town aged twenty-one years, who have resided therein for the space of six months, to elect and chuse annually on the third Tuesday in February* seven trustees, which election shall be conducted by one of the then acting trustees to be appointed by the board for that purpose; previous notice thereof shall be given by the chairman in the most public place in the said town, and the return of persons so elected shall be made to the clerk of the said board, which shall be recorded in their books.

Their powers.

SEC. 2. The said trustees, or a majority of them, shall have power to make such rules and regulations for the government of the said town as they may deem necessary to the health, peace or security of the inhabitants, to erect and repair a market-house, to appoint a clerk of the market, and prescribe his duties, to erect by-laws and ordinances for the government of the said market, and to affix a penalty to the breach of any rules or laws which they may establish, not exceeding the sum of ten dollars, to be recovered at the suit of the trustees aforesaid, in the same manner as sums of the like amount are now recoverable by law: *Provided always,* that before any rules or laws are finally adopted, they shall be advertized for four weeks at the state-house, and market-house (when erected) in the town of Frankfort, and that they are consistent with the constitution and laws of this commonwealth.

Proviso.

Penalty on persons exposing
articles to sale
below weight,
&c.

If any person in the market-house of the said town shall expose to sale any article by weight or measure below the standard established in this country, it shall be lawful for the clerk of the market to seize and sell the same, the proceeds of which shall be at the disposal of the trustees of the town for public purposes.

Lot to erect
market house
on.

The public lot reserved by a resolution of the assembly in one thousand seven hundred and ninety-four, for erecting a market-house on, shall be appropriated by the trustees for that purpose.

Further powers

SEC. 3. *And be it enacted,* That the trustees of the said

* Altered to MARCH by 6th sec. of chap. 303.

town shall have the same power of opening and repairing the streets as is granted to the trustees of towns by an act entitled "an act concerning the establishing of towns."

1797.

SEC. 4. *And be it enacted*, That in order to carry into effect the purposes contemplated by this act, the trustees may impose a tax not exceeding two hundred dollars annually on the titheables and property real and personal within the said town and limits aforesaid, and make provision for the collection of the taxes, and direct distress to be made for delinquences.

May impose a tax, &c.

SEC. 5. *And be it further enacted*, That the land laid off on the south side of Kentucky river, opposite the town of Frankfort, by John Logan, William Murray, George Campbell and Baker Ewing, together with so much of the land on either side of the river within one mile of the public square, as the proprietor or proprietors of the same may, within six months from the passing of this act, signify to the trustees their wish of including, be included within and be considered as a part of the town of Frankfort.

Limits may be enlarged.

SEC. 6. *And be it further enacted*, That all the powers invested with the present board of trustees shall devolve upon their successors; that from and after the third Tuesday in February next, they shall cease to act as such, and shall transfer all papers and property in their possession to the trustees appointed in conformity to this act.

Powers of the present trustees to devolve on their successors.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCXCIX.

An ACT concerning occupying claimants of Land.

Approved February 27th, 1797.

The principles of this law were acted upon by the colony of Virginia, in 1661, as appears by the following act;

I. [13 Car. 2 cap. 70.] If any person hath built or seated upon any Lands supposed his own, but proving upon a just survey, to belong to another, the charge of such building, seating or clearing, shall, by twelve men, upon their oaths, be indifferently valued; and the consideration, by them so adjudged, shall be paid by the owner of the land to such seater: but if he is not willing to disburse so much, the said twelve men shall make a valuation of what the land was worth before seating, which the seater shall accordingly pay to the owner.

1797.

Preamble.

II. *Provided*, No consideration be allowed for building or clearing, to any person who shall obstinately persist, after lawful warning given him to desist.

WHEREAS from the frequency of interfering claims to land, and the unsettled state of the country, it often happens that titles lay a long time dormant, and many persons deducing a fair title from the record, settle themselves on land supposing it to be their own, from which they may be afterwards evicted by a title paramount thereto; and it is just that the proprietor of the better title shall pay the occupying claimant of the land for all valuable improvements made thereon; and also that the occupying claimant shall satisfy the real owner of the same for all damages that may have been done to the land by the commission of waste or otherwise during the occupancy:

Person deducing a title to land not to be liable to rents, damages &c.

SEC. 1. Therefore, *Be it enacted by the general assembly*, That all and every person who may hereafter be evicted from any land for which he can shew a plain and connected title in law or equity, deduced from the record of some public office, without actual notice of an adverse title in like manner derived from record, shall be exempt and free from all and every species of action, writ or prosecution, for or on account of any rents or profits, or damages, which shall have been done, accrued or incurred at any time prior to receipt of actual notice of the adverse claim by which the eviction may be effected, provided such person obtained peaceable possession of the land.

Court to appoint seven persons.

SEC. 2. *And be it further enacted*, That the court who shall pronounce and give the judgment of eviction either in law or equity, shall at the time nominate seven fit persons, any five of whom shall have power, and it shall be their duty to go on the premises, and after viewing the same on oath or affirmation to assess the value of all such lasting and valuable improvements which shall have been made thereon prior to the receipt of such notice as aforesaid; and also to assess all damages the land may have sustained by the commission of any kind of waste, or by the reduction of soil by cultivation or otherwise, during the occupancy of the person evicted, and then subtract the same from the estimated value of the said improvements; which assessment signed and sealed by the persons making the same, shall be by them lodged with the clerk of the court wherein they were

Who shall assess the value of the improvements and damages done to the land.

Which assessment shall be entered up.

nominated before the next ensuing term, or as soon thereafter as may be convenient, and at the next court after such assessment, it shall be entered up as a judgment in favor of the person evicted and against the successful claimant of the land by the clerk, upon which judgment execution shall immediately be issued by the clerk if directed by the person evicted, unless the successful claimant shall give bond and security, to be judged of by the court to the person evicted, and to be taken at the time of entering up such judgment, conditioned to pay the same within twelve months from the date thereof, with five per cent. interest thereon, provided the balance shall ultimately be in favor of such occupying claimant according to the directions and provisions of this act; which bond shall have the force of a judgment, and at the expiration of twelve months aforesaid, an execution shall be issued upon the same by the clerk of the court in which it was taken, at the request of the party entitled thereto, an oath being made that the same is yet due; should the balance be in favor of the successful claimant, judgment shall in like manner be entered up in his favor against the other party for the amount of the same, upon which execution may be issued as aforesaid, unless bond and security shall be given to such claimant, which may be acted upon in the manner before directed. And to declare what shall be the law between adverse claimants under distinct titles of the kinds aforesaid after notice,

SEC. 3. *Be it further enacted*, That the persons nominated by the court as aforesaid when making an assessment shall carefully distinguish between such improvements as were made on the land prior to notice, and those which were made after notice, and when making an assessment they shall also take into consideration all such necessary and lasting improvements as shall have been made on the lands after the receipt of such notice as aforesaid, and shall ascertain the amount of the value thereof; and they shall also take into consideration and ascertain the amount of the value of the rents and profits arising from the whole of the improvements on the land from the time that notice of such adverse claim was received by the occupying claimant, and then after taking the amount of the one from the other, the balance shall be added to or subtracted from the amount of the value

1797.

And execution may issue thereon.

Unless claimant give bond.

To pay the amount in twelve months.

Which bond shall have the force of a judgment.

But if the balance be in favor of the successful claimant judgment shall be entered up, &c.

Value of improvements, &c. to be ascertained.

1797

of the improvements which shall have been made before the receipt of the notice aforesaid as the nature of the case shall require.

The land to be valued,

SEC. 4. *Be it further enacted*, That the said commissioners shall also estimate the value of the lands in dispute, exclusive of any improvements that shall have been made thereon, and make report of the amount of such valuation to the court; and if the value of the improvements shall exceed such estimated value of the land in dispute, in that case it shall and may be lawful for the proprietor of the better title to transfer or convey, as the nature of the case may require, his better title to the occupying claimant; and thereupon a judgment shall be entered up in his favor against the occupying claimant for such estimated value, upon which an execution may issue unless the occupying claimant shall give bond and security, to be approved of by the court, to pay the amount of such judgment within one year after the person transferring or conveying as aforesaid, with interest from the date; which bond shall have the force of a judgment, and if not paid at the expiration of the year an execution may issue in the manner before directed by this act: *Provided*, however, that the proprietor of the better title shall in every such case at the time of entering up judgment in his favor, give bond and security to be approved of by the court to the occupying claimant, to refund the amount of such judgment in case the land so transferred or conveyed shall ever thereafter be taken from him by any other prior or better claim.

Provido,

Commissioners to take oath.

SEC. 5. *And be it further enacted*, That the persons nominated by the court in virtue of this act, shall be called commissioners, and shall respectively take an oath or affirmation to do equal right to the parties in controversy, and shall also have power and authority to call witnesses, and administer the necessary oaths and to examine them for the ascertainment of any fact material in the enquiry and assessment by this act directed.

May summon witnesses.

How to make their assessment.

SEC. 6. *And be it further enacted*, That the said commissioners, in making every estimate of value by virtue of this act, shall state separately the result of each; and the court shall have power to make such allowance to the said commissioners in any case as shall seem just, which allowance shall be taxed and collected as costs: *Provided*, that this act shall not be extended to affect or impair the

Allowance made by the court.
Provido.

obligation of contracts, or to authorise the occupying claimant to be twice paid for his improvements: and in all cases where the occupying claimant is paid for his improvements by any other person than the proprietor of the better title, such person shall have the same redress as is allowed to the occupying claimant.

1797.

SEC. 7. *And be it further enacted,* That the court shall have the same power to proceed by appointing commissioners to assess the value of the improvements, and the damages by the commission of any kind of waste, by reduction of soil, by cultivation or otherwise, during the occupancy of the person evicted, in case of arbitration or by consent of the parties on motion without a suit.

When the parties arbitrate, &c.

SEC. 8. *And be it further enacted,* That notice of any adverse claim or title to the land within the meaning of this act, shall have been given by bringing a suit either in law or equity for the same by the one or the other of the parties, and may hereafter be given by bringing a suit as aforesaid, or by delivering an attested copy of the entry, survey or patent, from which he derives his title or claim, or leaving any such copy with the party, his wife or other free person above the age of sixteen years on the plantation: *Provided,* however, that the notice given by the delivery of an attested copy as aforesaid, shall be void unless suit is brought within one year thereafter: *Provided,* that in no case shall the proprietor of the better title be obliged to pay to the occupying claimant for improvements made after notice, more than what is equal to the rents and profits aforesaid.

What shall be notice of an adverse claim.

SEC. 9. *And be it further enacted,* That notice to any occupying claimant shall bind all those claiming from, by or through such occupying claimant to the extent of such claim.

What persons the notice shall bind,

SEC. 10. *And be it further enacted,* That nothing in this act shall be construed so as to prevent any court from issuing a precept to stay waste and ruling the party to give bond and security in such manner as such court may think right.

This act shall be in force from the passage thereof.

1797.

CHAPTER CCC.

An ACT for the better regulation of the town of Paris, and vesting the trustees with additional powers.

Approved February 27th, 1797.

Seven trustees
to be elected &
by whom.

SECTION 1. *BE it enacted by the general assembly,* That each freeholder, house-keeper and free male inhabitant of the town of Paris, aged twenty-one years (other than free negroes and mulattoes) who have resided in said town for the space of six months, are hereby authorised to elect and choose by ballot annually, seven trustees : for which purpose,

Time and place
of holding the
election.

SEC. 2. *Be it enacted,* That an election shall be held at the court house in the said town, by one of the trustees thereof to be appointed by the board for that purpose on the first Monday in March annually, ten days previous notice being advertised by the chairman of the said board, in the most public places in the said town ; and the persons so elected shall be returned to the clerk of the said board, to be recorded in books to be by them kept for that purpose.

Whom may be
elected a trustee.

SEC. 3. *Be it enacted by the authority aforesaid,* That no person shall be capable of being elected to act as a trustee who has not resided within the said town six months, and who is not a freeholder and an inhabitant of the said town : and that vacancies occasioned by death, resignation or otherwise, shall be supplied by elections, to be made in manner herein before directed, on a day to be appointed by the remaining trustees ; and that a return thereof be made to the clerk of the said board in the manner herein before directed.

Vacancies how
to be filled.

Trustees may
impose a tax.
For what purposes.

SEC. 4. *And be it further enacted,* That the said trustees, and their successors, or a majority of them, shall have power to impose taxes not exceeding sixty pounds annually on the tithables and real property within the said town, for the purpose of paying a clerk to the said trustees, procuring record books, and for such purposes to be appropriated towards the regulation of the said town, as they, or a majority of them, may think proper and right, and to make provision and regulations for collecting and accounting for the taxes so imposed, by appointing a collector and directing a distress to be made for delinquencies, and by any other ways and means, and to make such other ordinances, regulations and bye laws,

And make provision for collecting it.

not contrary to the laws and constitution of this commonwealth, as shall by a majority of them be thought necessary for the regulation of the said town, and for carrying this act into compleat effect.

SEC. 5. *Be it further enacted*, That whenever a trustee shall cease to be a freeholder or inhabitant as aforesaid, he shall thenceforward be considered as disqualified, and another trustee shall be elected in his stead; and that immediately after every annual election of trustees directed by this act, the powers of their predecessors shall cease, and the trustees so elected shall be put in possession of the property, papers and records which the trustees whom they succeeded had possession of. And the trustees elected by this act, shall possess and exercise the same powers and authority as now are vested in the trustees of the said town by any law for establishing or regulating the same.

SEC. 6. And whereas the plat or plan of the said town as laid off by Lawrence Protzman, the original proprietor thereof, has, by unavoidable accidents been lost, by reason whereof the owners of lots in the said town labor under great inconveniences; for remedy whereof, *Be it enacted*, that the said trustees so elected by virtue of this act, or a majority of them, shall, as soon as may be after their election, proceed to make or cause a plat of the said town to be made as nearly as possible agreeable to the original plat as laid off by Lawrence Protzman; which plat when compleated shall, for the greater safety, and for the convenience of the holders of lots in said town, be recorded in the record books of the said trustees by their clerk, and also in the clerk's office of the said county court of Bourbon; and that the same shall be as effectual and binding on the several holders of lots within the said town, as though the original plat had never been lost: *Provided always*, that if any person shall have built or improved on the ground of another that shall be deemed of more value than the ground upon which it stands, that the owner of such ground shall be obliged to accept of such compensation for the same as shall be adjudged reasonable by the said trustees of the said town, to extend from the front to the rear of the said lot; or that the person who may have so built or improved upon the ground of another, shall have the privilege of removing the same: *Provided also*, that if it should be made

1797

What disqualifies a trustee.

Their powers.

Plat of the town to be made.

And recorded.

How far binding on the holders of lots. *Provido.*

1797.

appear that the person who may have so built or improved upon the ground of another, and done the same knowingly, shall not be considered as coming within the provision of this act.

Part of a cross street to be sold to repair the residue, &c.

SEC. 7. And whereas the cross-street in the said town, between the lots held by John Protzman and Samuel January, about sixty-six feet wide, is almost covered with water, whereby it is rendered useless as a street in its present situation to the said Protzman and January, and to the town in general; for remedy whereof, *Be it enacted*, that twenty-two feet of the same, adjoining the lot of said January, is hereby directed to be kept open as a street, and that the residue of the street be divided into two equal parts, and that the part adjoining the said Protzman's lot, be vested in the said Protzman and his heirs and assigns, as a compensation for giving up the benefit of the said street, and the remaining part shall be advertised three weeks successively in the Kentucky Herald, and sold at public sale, and the money arising therefrom shall be appropriated towards levelling the said twenty-two feet left as a street.

Stud horses not to be shewn in the streets.

Under penalty.

How to be recovered and applied.

SEC. 8. *Be it further enacted*, That in case the trustees of the said town shall appropriate a suitable place of ground in said town, to be adjudged of by themselves, for the purpose of shewing stud-horses, and shall give notice thereof, by publishing the same in the Kentucky Herald three weeks successively, no person shall there-after shew any stud-horse in the streets or highways of the said town, on pain of forfeiting and paying the sum of three dollars; which forfeiture shall be sued for by any person in the name of the trustees, and the money arising therefrom shall be appropriated towards the general fund of the said town.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCI.

An ACT authorising the Governor to employ Expresses.

Approved February 27, 1797.

Preamble.

WHEREAS the executive of this state is much embarrassed by not being legally authorised to employ an

express whenever the exigency of governmental communications may require it ; for remedy whereof.

SEC. 1. *Be it enacted by the general assembly,* That the governor may, and he is hereby authorised, when to him it may seem necessary, to employ one or more persons to carry his dispatches to any place within this state, or to the executive of any of the adjacent states, and make such expresses any allowance, not exceeding four pence per mile for going, and four pence per mile for returning for their services ; and the auditor of public accounts is hereby directed to issue his warrant on the treasurer for any expences incurred in compliance with this act.

1797.

CHAPTER CCCII.

An ACT concerning Delinquent Sheriffs.

Approved February 27, 1797.

See the prælection to chap. 16.

WHEREAS it is represented to the present general assembly, that there are sheriffs within this commonwealth that have failed to make their collections, and settle with the treasurer agreeable to law, whereby many inconveniences may arise :

SECTION 1. *Be it enacted by the general assembly,* That no person shall be hereafter chosen or appointed to the office of sheriff, who shall not have obtained a *quietus* from the auditor for the full amount of the taxes due for the time he was in office.

This act shall commence and be in force from the passage thereof.

CHAPTER CCCIII.

An ACT appropriating Rooms to the Officers of Government, and for other purposes.

Approved February 27, 1797.

SECTION 1. *BE it enacted by the general assembly,* That the treasurer, as soon as a room is prepared as hereinafter directed, shall keep his office in the state-house in room No. 2—The auditor in room No. 3—The register in room No. 1—The public printer in room

Appropriation
of rooms.

1797. No. 4—And the secretary in the room in which his office is at present kept.

Sections 2, 3 and 4 were temporary and have had their effect.

A person to be employed to take care of the state-house.

His duty

His allowance.

Day for election.

SEC. 5. *And be it further enacted by the general assembly,* That William Trigg is hereby empowered and required to employ some person from and after the first day of May next, to take care of the state-house, and grant such person a certificate of his appointment. It shall be the duty of the person so appointed to keep the state-house clean and in good repair; also the yard and inclosure, and to keep all the rooms locked except those which are in the actual use of the persons legally authorised to occupy them. And the person who from time to time may be appointed, shall lay his claim before the legislature, and such allowance shall be made them as to them may appear right and proper.

SEC. 6. *And be it further enacted,* That the day for electing trustees of the town of Frankfort, shall be annually on the third Tuesday in March, and that the powers of the present board shall remain in full force until the election on the twenty-first day of March next; any law to the contrary notwithstanding.

This act shall be in force from the time of its passage.

CHAPTER CCCIV.

An ACT concerning the Town of Washington, in Mason County, and for other purposes.

Approved February 27, 1797.

Trustees to levy a certain sum.

SEC. 1. *BE it enacted by the general assembly,* That the trustees of the town of Washington, in the county of Mason, and their successors in office, are hereby empowered to levy on the real property within the bounds of said town, any sum not exceeding one hundred pounds per annum, for the purpose of levelling and keeping in repair the streets and alleys, and building a market-house in said town; which sums so levied shall be collected and accounted for in the following manner: The trustees, or a majority of them, shall annually in the month of March appoint three fit persons, either of their own body or others being inhabitants and freeholders in said town, who shall value in current money the real estates therein, which valuation shall be returned to the

said trustees, who shall assess and apportion to each person the sum to be paid by each in proportion to such valuation, and the remaining trustees shall value and apportion in like manner the real estates of such persons so appointed. The trustees, or a majority of them, shall have power and authority to appoint annually a collector for the purpose of collecting such sum or sums of money as may be assessed, taking from such collector bond with such security as they shall approve, with penalty in double the sum to be collected, payable to the said trustees and their successors in office, and with a condition for the faithful execution of his office: and the said collector shall have the same powers to collect, have the same allowance for collecting, and be liable to be proceeded against by the said trustees and their successors in the same manner for such money as he shall or ought to collect and does not pay, as sheriffs are entitled and subjected to, with respect to county levies. *And be it further enacted*, that the said trustees shall, in the month of November or December in every year, lay before the county court of the said county, a fair statement of the receipts and disbursements of the money by them received in compliance with this act, and shall transmit the residue in their hands to their successors in office; and in case of default may be proceeded against in the same manner as is herein before directed in the case of a collector.

1797.

How collected
and accounted
for.
A collector to
be appointed.

His power.

Accounts to be
laid before the
county courts.

Penalty for
failure therein.

SEC. 2. *And be it further enacted*, That whosoever shall be guilty of running or racing horses in the streets or highways, or shooting at marks within the limits of the in-lots of the town of Maysville, in the county of Mason, or of the town of Stanford, in the county of Lincoln, shall forfeit and pay for every such offence, the sum of six shillings; which forfeitures shall be collected in the name of the trustees of said town, and be recovered in the manner sums of like amount are recoverable by law, and shall be applied by the said trustees for keeping the bridges and streets of the said towns in repair.

Penalty for ra-
cing, &c. in
Maysville or
Stanford.

This act shall commence and be in force from and after the passage thereof.

1797,

CHAPTER CCCV.

An ACT concerning the original title papers of land in this state remaining in the Register's office in the state of Virginia.

Approved February 27th, 1797.

Edmund Thomas to apply for certain papers.

And to take copies.

And to demand and receive certain monies of the register.

And pay the same to the treasurer of this state.

And give bond and security.

Compensation for his services.

Be it enacted by the general assembly, That Edmund Thomas is hereby authorised and appointed to apply to the executive of the state of Virginia, for all the original papers in the register's office of that state on which the titles to land in this state depend, or in any wise relating thereto ; and where the originals cannot be had, to take copies of all the warrants, plats and certificates ; and also of all patents that have been issued for lands lying in this state, and enter the same in well bound books to be provided by him for that purpose. And the said Edmund Thomas is hereby authorised and empowered to demand and receive from the register of the land-office in the state of Virginia, all monies by him received on plats and certificates for which the patents have not issued, together with a list of their names, and the several sums paid by them as well on lands whereon the patents have not been issued as otherwise ; and shall pay and account for the same to the treasurer of this state on oath, and lodge the said list with the register. The said Edmund Thomas shall secure all the books and papers that he is hereby directed to receive from the state of Virginia, in sufficient trunks, and transport the same to this state, and lodge them in the register's office, and take the register's receipt therefor.

The said Edmund Thomas shall enter into bond with sufficient security, to the governor of this state, for the time being, in the penalty of two thousand pounds, for the due and faithful performance of the duties that are enjoined him by this act, within ten months from the passage of this act. And the said Edmund Thomas shall be furnished with the sum of one thousand dollars out of the public treasury, to enable him to obtain and bring the said papers to this state ; and he shall be entitled to a compensation for his services when performed.

The auditor shall grant a warrant to the said Edmund Thomas for the amount of the sum allowed by this act ; and the treasurer upon the said warrant being produced to him, shall pay the same.

CHAPTER CCCVI.

1797.

An ACT to amend an act entitled, "An act establishing a town on the lands of Philemon Thomas, in Mason county."

Approved February 27th, 1797.

BE it enacted by the general assembly, That the purchasers of lots in Germantown, in the county of Mason, who shall hereafter receive deeds of conveyance from the trustees thereof, shall hold the lands against the claims of Philemon Thomas and his heirs, or any other person whatsoever: *Provided,* nevertheless, that the said Philemon Thomas, previous to the making of any such conveyances, shall enter into bond with one or more securities to the trustees in the penalty of two thousand pounds, conditioned for the payment of the amount of such sales, with interest, to any person who shall hereafter establish a more legal or equitable title to said land.

This act shall be in force from and after the passage thereof.

CHAPTER CCCVII.

An ACT to amend and reduce into one the several acts establishing a Permanent Revenue.

Approved February 28, 1797.

See the preface to chapter 10.

SECTION 1. BE it enacted by the general assembly, That there shall be paid within this state the following taxes: for every hundred acres of land the following sums according to the following classes: the land shall be divided into three classes according to their quality, that is to say, first, second and third rate: the first rate shall be taxed at three shillings; second rate at one shilling and six pence; and the third rate at nine pence per hundred acres, and in the same proportion for a greater or less quantity: for every slave, except such as have been or may be exempted by the county court from the payment of taxes on account of infirmity, one shilling and six pence: for every horse, mare, colt or mule, (except covering horses) four pence, and for every covering horse the sum for which such horse covers one mare the season, which rate or sum the owner shall note down when he delivers in his list of his property to the com-

Lands to be
classified.
Articles taxed.

1797.

missioners : also for every retail store within this state, five pounds ; and for every billiard-table, ten pounds, and also three pounds for every ordinary license. Which said taxes shall be paid annually, in the manner herein-after directed.

County courts
to appoint com-
missioners of
the tax.

Commissioner's
oath.

SEC. 2. The county court of each county within this commonwealth, when such appointments have not been already made, shall appoint as many proper persons as they shall think necessary in the present year, the year 1799, and every fourth year thereafter to be commissioners for the purposes hereinafter mentioned, to continue in office one year : each commissioner so appointed shall take the following oath or affirmation before some justice of the peace for his county before he begins to exercise the duties of his office : "I, A. B. do solemnly swear or affirm (as the case may be) that as commissioner of county, I will, to the best of my skill and judgment, diligently and faithfully execute the duties of the said office according to law, without favor, affection or partiality ; and that I will do equal justice according to the best of my knowledge, in every case in which I shall act as commissioner. So help me God." A certificate of which oath shall be recorded in the court held for his county.

Cour's to allot
districts.

Commissioner's
duty.

SEC. 3. The court for each county in which more than one commissioner is appointed, shall lay off and ascertain the bounds of the district allotted to each commissioner. Every commissioner shall perform the following duties within his district : those who have been already appointed shall, on the eleventh day of March next after their appointment, and those who shall be hereafter appointed, shall, immediately after such appointments, begin and continue to proceed without delay throughout their districts, and call on every person therein subject to taxation, or having property in his or her possession or care, on which any tax is hereby imposed for a written list thereof ; which list being corrected (if necessary) and distinctly read over by the commissioner to the person delivering the same, he or she shall then make oath or affirmation, that such list contains a true and perfect account of all persons, and every species of property belonging to or in his possession or care within that district, subject to taxation on the tenth day of March then next preceding ; and that no contract, change or removal

Lists to be giv-
en in on oath.

whatsoever of property hath been made or entered into, or any other method devised, practised or used, in order to evade the payment of taxes; which oath or affirmation the commissioner is hereby empowered to administer. In case any person shall be absent from his or her place of residence at the time the commissioner calls to receive his or her list; and if it appear to the commissioner that such absence was not intentional, or done with a view to avoid a delivery of such list, it shall be lawful for the commissioner to require the attendance of such absent person with his or her list, at any time and place within his district; and in case of his or her refusing or neglecting to attend at such time or place, the commissioner shall proceed in like manner as is hereinafter directed in case of refusal to give in lists; and the court shall determine on the circumstances of the case whether the party so refusing or neglecting to attend, shall be subject to the fine hereby imposed on those refusing to give in lists, and shall give judgment accordingly. Each commissioner shall make return on oath to another commissioner of the same county of all his taxable property, and shall then enter the same in the list herein after directed to be made out by him of the taxable property within his district; and when there is but one commissioner in a county such commissioner shall give in a list of his taxable property as before directed.

SEC. 4. Each of the commissioners shall, after collecting the list of property within his district in manner before directed, make out three alphabetical lists therefrom, shewing in columns according to the forms heretofore annexed, the date when each list was received, the person chargeable with the tax or taxes, and the number or quality of every species of property, inserting particularly the number of all free males above the age of twenty-one, and distinguishing those persons also subject to county levies; also the rate of the land, placing each tract in its proper class, the county in which it lies, and the water course on which it is situate; likewise in whose name entered, for whom surveyed, if a survey has been made, to whom patented, if a patent has issued; also for what years taxes have been paid, if those circumstances can be ascertained; which list shall be kept and delivered in the following manner: each commissioner shall deliver the lists, together with the original lists ta-

1797.

By whom administered.

Commissioners to make out alphabetical lists.

And deliver them to the clerks.

1797.

Auditor's list
evidence, &c.

ken from the said individuals in his districts, to the clerk of the county court of his county, who having examined the said lists, and corrected any error which may appear therein, shall certify that they are true copies, and having retained one in his possession shall return the other lists so certified to the commissioners, who shall deliver one to the sheriff of the county as his guide to collect the taxes, and another to the auditor of public accounts, to be kept by him; which list or a certificate from the auditor of the balance due shall be admitted as evidence by any court in any suit or motion against the sheriff or collector, for the amount of the taxes charged against him; all which lists it is hereby declared to be the duty of the commissioners to have delivered to the persons above named on or before the last day of August in the same year that they are appointed: the list in the clerk's office shall serve for laying the county levy, and it may be examined, or copies had therefrom at the charge of the person or persons desiring the same.

Lands once list-
ed not to be
again entered.Property trans-
ferred to be
charged to the
new owner, &c.

SEC. 5. No tract of land that is listed agreeably to this act, shall be again entered, but shall stand charged to the person by whom, or for whom it is listed, unless the person entering the same shall have the alteration made as hereafter directed. The clerk of each county court within this state shall keep a book of transfers, and every person charged with any tract of land, who shall dispose of the same to any other person, shall have the alteration made with the clerk aforesaid, and charged to the person or persons to whom transferred; and it shall be lawful for any person charged with personal property subject to taxation, which may die, or otherwise be destroyed or transferred, to apply to the clerk and have the said property taken from his list of taxable property, and charged to the person or persons to whom transferred, if within the county: and any person who is charged with keeping a retail store, and shall hereafter decline keeping the same, may apply in like manner, and have the necessary alterations made: *Provided*, however, that no alteration shall take place so as to exempt any person from paying the taxes due upon the whole amount of the property entered the same year in which it is listed; and every person removing with his or her property from another state, or who shall open a retail store or set up a billiard-table in those years in which commissioners

are not appointed agreeably to this act, shall between the tenth day of March and the first day of June next after such removal, or opening said store, or setting up said billiard-table, give in on oath to the clerk of the court of the county in which he shall reside, a list of all his property subject to taxation agreeably to this act; and in case of his or her failing or neglecting so to do, shall be liable to the like fines and forfeitures, and recoverable in like manner as persons refusing or neglecting to deliver their lists of taxables to a commissioner; and the clerk shall administer the same oath to the persons listing their property, as commissioners by this act are directed: and when any person shall apply to have an alteration made agreeably to this act, the clerk shall swear the person so applying to the truth of the case. Every clerk with whom any property is listed or alteration made as heretofore directed, shall transmit to the auditor, and deliver to the sheriff on or before the last day of August in every year, a certified list of all such alterations and entries of property made with him, and the auditor and sheriffs shall be governed accordingly. The clerk of the court shall deliver to every new sheriff or collector coming into office in his county within one month after he has qualified himself to act as sheriff or collector, a true copy of the commissioner's books last lodged in his office, with such entries and alterations in property as have been made with him, as a guide to the said sheriff or collector to collect the taxes, unless there shall be commissioners appointed to take in the list of property the same year in which the said sheriff or collector comes into office; and in that case a list of the lands only. The clerk shall be entitled for every alteration, to the sum of six pence, to be paid by the person having such alteration made, and shall also be allowed six pence for every list of property subject to taxation, recorded by him from each individual agreeably to this act, and certifying and transmitting the same to the auditor and sheriff, to be paid out of the public treasury on his producing a certificate from the court of his county of the amount that is due.

SEC. 6. The court of each county shall make such allowance to the clerk for his services under this act and not otherwise provided for, as they shall think necessary, and shall allow to each of the commissioners for their

1797.

Persons opening a retail store &c to give in their lists
Penalty for failure.

Clerks to deliver lists, &c.

And a true copy of the commissioners books.

Clerk's fee.

Court to make allowance.

1797.

To be paid by
the sheriff.

services the sum of six shillings for every day they shall make satisfactory proof to the court to have been actually engaged in the execution of this act ; and they shall be exempted from military duty during their continuance in office : and the sheriff of each county is hereby directed and empowered to pay the commissioners and clerks respectively the amount of their several allowances, on receiving a certificate from the court therefor certified by the clerk ; and the amount of such allowances with the party's receipt, shall be credited the sheriff by the auditor in the settlement of his account of taxes.

Penalties on
persons refusing
to give in lists.

How recovered

How collected
and accounted

SEC. 7. If any person shall give or deliver to any commissioner, a false or fraudulent list of persons or property subject to taxation, or shall refuse to give a list on oath or affirmation, when required by a commissioner, the person or persons so refusing, or giving a false or fraudulent list, shall be liable to a fine of five pounds ; and the commissioner shall proceed to list such persons' property agreeably to the best information he can procure ; and all such property so ascertained, shall moreover be subject to a treble tax, to be collected and distrained for by the sheriff as in other cases ; which fine and treble taxes shall be recovered in the county court by the following mode of proceeding, and shall be applied as hereafter directed : The commissioner shall give information thereof personally, or if unable to attend, in writing to the next court held for the county, which court shall forthwith direct the clerk to issue a summons requiring the party to appear at the next court to be held for the county to shew cause, if any he can, why he shall not be fined and treble taxed for refusing to deliver in his list, or for giving in an imperfect or fraudulent list of taxables ; and the persons upon being served therewith by the sheriff, and appearing, shall immediately plead to issue, and the matter thereof shall be enquired into by a jury, or the court at the defendant's option, or the person failing to appear on being summoned, the court shall proceed to give judgment and award execution for such fine and treble tax and costs, unless for good cause to them shewn ; the court shall continue the same until the next court, and the court shall certify the amount of such tax and fine to the sheriff and auditor, that the same may be collected and accounted for. The amount of the fine and tax with the costs, after deducting therefrom as much as

may be necessary to pay the clerk's and sheriff's fees, and such allowance as the court may think reasonable to make the commissioner for his extraordinary trouble on the occasion, shall be charged to the sheriff, and accounted for in like manner as other taxes.

1797

SEC. 8. For preventing frauds and impositions on the commissioners, any person having knowledge of any false or fraudulent list being given to the commissioner, or of any person who fails to give in his list to the clerk of taxable property agreeably to this act, shall give information thereof to the county court in like manner as the commissioner is directed, and thereupon the same mode of proceeding shall be had as is directed in case of information given by a commissioner; and the person informing shall be entitled to, and receive one half of the fine imposed on the offender or offenders to his own use, and the other half, after paying costs, to be applied as before directed. The clerk or commissioner failing to perform any one of the duties imposed on them respectively by this act, shall be subject to a fine of fifty pounds, to be recovered on motion of the auditor in any court of record in this commonwealth, notice of such motion being previously given in the same manner as to delinquent sheriffs.

Any person knowing of a false list, &c. given in to inform the court.

Penalty on clerks, &c.

SEC. 9. A list of all insolvents and of such persons as have removed out of the county with their property, shall be returned by the sheriff or collector, on oath, to the county court; which list as far as approved of and allowed by the court, shall be transmitted by the clerk to the auditor, with an account of the amount of the taxes due from any person who may have removed out of the county, together with the name of the county to which he or she may have removed, within two months after the said list is approved by the court; and the said sheriff or collector shall have credit in his account with the public by the auditor for the amount of the taxes due from such insolvents and persons removed, provided they produce to the auditor a copy of their account sworn to before the said court; and the auditor shall immediately transmit to the sheriff or collector of the county to which such person or persons may have removed the account so received, to be entered in his book, and collected and accounted for by him according to law. The amount of all taxes, fines and additional taxes imposed

Sheriff to return lists of insolvents.

Sheriff to have credit therefor.

Clerk to transmit to the auditor amount of all fines, &c.

1797.

by virtue of this act, shall be by the clerk of the respective courts transmitted to the auditor before the last day of November annually, and the said clerks shall state in their accounts the amount of the allowances made to the commissioners, clerk and sheriff, for which allowances the clerk shall have credit with the auditor, and also for all payments made by the sheriff to the public, receipts for which shall be by said sheriff transmitted to the clerk within twenty days after obtaining the same, a copy of which account shall be transmitted by the clerk to the auditor as aforesaid.

Sheriff to collect the taxes,

He may make distress when, and of what property.

And sell.

Provido.

Shall account for and pay taxes into the treasury when.

Penalty on failure.

How recoverable.

SEC. 10. The sheriff of each county shall, from and after the first day of February annually, collect and receive from all and every person or persons chargeable therewith, the taxes imposed by this act in his said county; and in case payment be not made or received on or before the first day of April annually, the said sheriff shall have power to distrain the slaves, goods and chattels which shall be found on the lands or in possession of the persons so indebted or failing, notwithstanding such slaves, goods or chattels, shall be comprized in any deed or mortgage, and if the owner thereof shall not pay the taxes due within twenty days after such distress, such sheriff shall sell the same, or so much thereof as shall be sufficient to discharge the said taxes and the charges of the distress and sale for ready money or auditor's warrants on the treasury of this state: *Provided always*, that when unreasonable seizures or distress shall be made, the party grieved shall have an action against the sheriff or collector, and shall recover full costs when any damages are given. The sheriff shall duly account for and pay into the treasury of this commonwealth, on or before the first day of September annually, the full amount of all taxes imposed in his county, deducting therefrom such allowances as the law directs to be made, and six per centum for his commissions thereon; and in case the said sheriff shall fail to account for and pay into the treasury as aforesaid, the amount of taxes to be collected by him according to law, every such delinquent sheriff and his securities, or either of them, shall be liable to a judgment against them on motion to be made by the auditor, or other person for him in any court of record within this state, provided they have ten days notice of the day on which the motion is to be made, for the amount of

the taxes due and fifteen per centum damages, together with an interest of five per centum on the whole amount until paid, and the costs of the motion, including any expences that may have been incurred in giving the said notice for the use of the commonwealth; and thereupon execution shall issue accordingly. The said taxes shall be paid in Spanish milled dollars at the rate of six shillings each, or in other current silver or gold coin at a proportionable value.

1797.

SEC. 11. The sheriff of each county shall, at the county courts held in the months of November or December enter into bond with at least two sufficient securities in the penalty of ten thousand pounds payable to the governor for the time being, conditioned for the due and faithful paying and accounting for all taxes and arrearages of taxes and interest which are or may become due according to law, which ought to be collected and accounted for by him during his continuance to act as sheriff; which bond shall be recorded in the court of the county, and the said bond shall not be void on the first recovery, but may be moved on from time to time, until the whole of the penalty of such bond shall be recovered thereon; and on any motion to be made on such bond an attested copy thereof shall be admitted as evidence: and if the sheriff of the county shall neglect or refuse to give such bond, a collector of the taxes shall be appointed for that county, who shall continue to act until another sheriff is qualified according to law, and shall have given bond and security as aforesaid; and the said collector shall give such bond, perform such duties, be entitled to such emoluments, subject to such penalties, and be liable to have such proceedings against him and his securities as above directed in case of sheriffs, and if the sheriff shall refuse or neglect to give such bond before the March court of his county, then next ensuing, his office shall be vacated, and such vacancy supplied according to law; but the said collector shall collect the taxes for that year for which he has given bond and security to collect.

Sheriff to give
bond &c.

Condition.

Not void on
first recovery.

SEC. 12. It shall be the duty of all owners and proprietors of lands within this state, whether they claim the same by entry, survey, patent, deed of conveyance or otherwise, when applied to by a commissioner of the district in which they reside, to give in on oath, a list of all their lands, specifying in such list the number of acres

How lands are
to be entered.

1797

Penalty on
failureHow lands are
to be rated.How errors
may be correct-
ed.

in each tract, and the county and water course in which it is situate, and the quality of the land ; also an account of the names in which the entries were made, and for whom surveyed, if a survey has been made, and for whom patented, if a patent has issued, if they are acquainted therewith ; and if the party giving in his or her list shall swear that he does not know for whom the land was entered, surveyed, or to whom patented, the commissioner shall be at liberty to obtain the best information he can get, and insert the same in his list ; and every person who shall fail or neglect to give in his lands to a commissioner agreeably to the requisitions of this act, shall be subject to a fine of five pounds, and treble tax for every year he or she shall refuse or fail to give in his said land, to be recovered and accounted for as is by this act before directed. And any person listing his lands with the clerk shall give them in like manner as is hereby required to be given to a commissioner.

SEC. 13. And the following rule shall be observed in rating any tract of land : Where a greater part of a tract shall be superior in point of quality to second rate land, it shall be denominated first rate ; where a greater part of a tract shall be inferior to second rate and superior to third rate in point of quality, it shall be denominated second rate, and where the greater part of a tract of land shall be inferior to second rate, it shall be denominated third rate land ; and any tract or tracts of land that the owner has no knowledge of, and cannot give satisfactory information thereof, shall be placed in the second class.

SEC. 14. Where any person thinks any tract or tracts of land belonging to him or her are placed in an improper class, or the land twice or improperly listed, it shall be lawful for such person, upon application to the county court of the county in which the lands lie, or in which he or she resides, and making due proof of the same, to have the matter rectified, and the proper class of such tract or tracts ascertained or error corrected. And where any land shall be placed in an inferior class to what it ought to be, on due proof thereof to the court of the county in which the land lies, or in which it is listed, the said court shall have the same rectified and placed in the proper class ; which alteration shall be certified by the clerk to the sheriff and auditor, and the said sheriff and auditor shall be governed accordingly.

SEC. 15. The auditor shall keep a book for the purpose of receiving and entering lands of non-residents in the manner herein after directed. And all non-residents shall in future enter their lands with the auditor, who shall administer an oath to the person delivering such lists, or by any other means procure the best information in his power for the purpose of ascertaining the quality of such lands, placing each tract in its proper class, under the name of the county in which it shall be situate ; and every non-resident shall enter his lands agreeably to the rules and regulations of this act in case of residents ; all taxes due or which shall hereafter become due, with the interest on the lands of non-residents, shall be paid to the treasurer, and his receipt being produced to the auditor, he shall file the same in his office, and shall give such non-resident a *quietus* ; but the treasurer shall not receive from the non-resident any taxes, unless such non-resident shall produce to him a certificate from the auditor of the quantity and quality of the land for which he is about to pay the tax, which certificate shall be by the treasurer filed in his office. No payment shall be considered a discharge of any tax unless such *quietus* is obtained within three days from the auditor. When any non-resident shall fail to pay the tax and interest due on any tract of land within the time and agreeably to the regulations prescribed by law, the auditor shall transmit the account of taxes and interest due thereon to the sheriff of the county where any lands of such non-residents may be, under the like regulations as lands listed by residents with a commissioner lying in a different county ; and the sheriff shall proceed to sell the said lands lying in his said county in the same manner and under the like regulations as resident's lands are by law directed to be sold. The auditor shall keep a book of transfers, and every non-resident who has entered his lands with the auditor may, on transferring the same to any other person or persons, have the alteration made with the auditor, and charged to the person or persons to whom transferred ; and such person shall be chargeable with the tax of such land or lands thereafter ; and each person having such alteration made, shall pay six pence to the auditor ; and the money so received shall be accounted for and paid into the treasury by the auditor on

1797.

Non-residents
to enter their
lands.

Taxes thereon
to be paid to
the treasury.

Proceedings on
failure.

Auditor to keep
book, &c.

1797. the first day of November in every year, who shall take the treasurer's receipt for the same.

Penalty on
Sheriffs.

SEC. 16. Where any sheriff has received from any non-resident or non-residents any land tax, and shall not account for and pay the same into the treasury within the time prescribed by law, such sheriff shall be answerable for the money with the interest from the receipt thereof: and moreover, such sheriff and his securities, shall be liable to the party grieved for double damages and costs by action on the case, in any court of record within the commonwealth, having cognizance in similar cases. And any person who may be entitled to any credit for any taxes paid on lands for the years one thousand seven hundred and ninety-two and one thousand seven hundred and ninety-three, or for the one-fourth of the tax which ought not to have been collected in one thousand seven hundred and ninety-four, shall apply to the county court, who, on due proof of the same, shall direct the sheriff to give such person credit for the amount thereof in any tax which may become due, and the court directing such credit shall transmit a certificate thereof to the auditor, who shall give such sheriff a credit therefor in the settlement of his accounts.

Provision for
persons entitled
to credit &c.

Common-
wealth to have
a lien.

Which may be
levied.

Provido.

Provido.

SEC. 17. The commonwealth shall have a perpetual lien on every tract of land and every part thereof for the amount of all taxes and the interest due thereon, and no alienation of lands belonging to any person shall affect the claim or lien of this commonwealth, until the taxes and interest thereon due from such person are paid; and it shall be lawful for the sheriff or collector, where payment is not made in the time herein before prescribed to levy the whole amount of taxes and interest due thereon from any person, on any slaves, goods, or chattels, which may be found in the possession, or belonging to such person in his county, and on the slaves, goods, and chattels, which may be found on the land for which the tax is due, in possession of any person claiming under the proprietor from whom the tax became due: *Provided*, however, that no such distress shall be made on the slaves, goods, or chattels of any person for his land tax that may become due prior to the 19th day of December 1795, except found on the tract or tracts of land on which such tax is due: *Provided also*, that no purchaser shall be subject to the payment of any tax that may be due,

except for that part which he may have purchased: and all tenants who shall be obliged under this act to pay the taxes due on any lands leased by them prior to their interest in the same, or who shall be obliged to pay taxes on a greater part of such land than they hold under such lease, shall have a right to demand and receive the amount of taxes so paid by them, from the original owner and proprietor of such land, and shall have a lien on the land for which the taxes were so paid, until they be repaid the amount thereof: *Provided*, that nothing herein contained shall affect any special contract entered into between each original owner or proprietor and tenant concerning the payment of taxes which shall be due on such land. Every person who shall pay the taxes due on any land, who shall afterwards be evicted from the same, shall have a lien on the land for the taxes so paid by him, and interest thereon, and shall have a right to retain possession of such land until the person recovering it from him shall pay or tender him the amount thereof, unless the person so recovering the land shall also have paid the taxes due thereon; and in all cases where any person has paid, or shall hereafter pay the tax upon any tract of land which shall afterwards be lost or relinquished, in that case the person losing shall, upon application to the auditor, and producing satisfactory vouchers from some record to him, receive an audited warrant to the amount paid, with a deduction of six per centum therefrom, which shall be receivable in taxes as other audited warrants are. Where the taxes on any tract or tracts of land have been, or may hereafter be twice paid for the same year under the same title, upon the party's making satisfactory proof thereof to the court of the county in which he may reside, the court shall certify the same, and the sheriff shall give such person a credit for the amount thereof in his taxes for the next year, or any succeeding year, and the auditor shall credit such sheriff accordingly.

SEC. 18. It shall be lawful for the sheriff or collector to sell so much of each tract of land charged with taxes, as will be sufficient to pay the same, if the said land shall lie in his county: and the sheriff or collector shall in that case advertise the time and place of sale one month at the door of the court-house of his county, and for three weeks successively in the Kentucky Gazette or

1797.

Provision for tenants compelled to pay taxes before their interest in the land commenced, &c.

Proviso:

For persons evicted having paid the tax on the land.

And for persons having paid tax on land, afterwards lost or relinquished.

Or paying twice in one year for the same land.

Sheriff may sell land for the payment of the taxes. Advertise time and place.

1797.

And convey
the part sold.

Which shall
vest the right
in the purcha-
ser.

Owner may
direct what
part shall be
sold.

Proceedings if
the land on the
sheriff's list lie
not in his coun-
ty, and the tax
unpaid.

Sheriff to have
credit if land
will not sell for
the tax.

Herald. After such sale it shall be the duty of such sheriff or collector to deliver to the purchaser a certificate of the quantity of land sold, describing therein the tract that was charged with the tax, and the end or side from which the quantity sold is taken ; and the surveyor of the county upon the receipt of such certificate, shall by himself or deputy proceed to survey the quantity sold as aforesaid agreeably to the said certificate, and shall charge the purchaser with the expence of the same. The surveyor or his deputy, (as the case may be) shall give reasonable notice to the former owner, if in the county, or his agent, if any he has therein, of the day on which the survey is to be made, and upon the plat and certificate of the survey made as aforesaid being produced to the sheriff or collector, it shall be his duty to convey the same to the purchaser ; which conveyance shall vest in the purchaser all the right, title and interest of the proprietor for whose tax the land shall be sold : *Provided*, however, that the owner of land liable to be sold for non-payment of taxes, shall have the privilege of directing from what side, end or corner, the part to be sold shall be taken. If the land entered on a list delivered to a sheriff or collector, shall not lie within his county, and payment shall not be made to him of the tax due thereon, he shall, on or before the first day of May in every year, certify to the auditor a copy of so much of the list delivered to him as relates to the lands entered with the commissioner of his county lying in another county ; and it shall be the duty of the auditor to transmit a copy of the same to the sheriff or collector of the county in which such land lies, on or before the first day of July, whose duty it shall be, if payment be not made, and no property to distrain can be found, to sell the same in like manner he is herein before directed to sell land entered and lying within his own county : and where any sheriff or collector has failed to send to the auditor in the time prescribed by law, a list of the lands returned to him and lying in another county, it shall be lawful for the auditor to receive such lists from such sheriff or collector as if the same had been transmitted to him within the time directed by this act.

SEC. 19. All arrears of taxes due for land shall be charged and collected according to the class in which it is placed ; and where the sheriff shall expose any part of

a tract of land for sale for the amount of the tax and interest with which it is charged, and it will not sell for the same, it shall be the duty of the county court upon proof being made of the same, to certify it to the auditor, who shall give the sheriff credit for the taxes with which such land is charged, or so much thereof as is in arrears; and where any tract of land or part thereof is not sold upon being exposed as aforesaid, and the tax on the same not paid, it shall be the duty of the sheriff to expose the same annually until the tax is paid or the land sold; and the taxes due on all lands exposed to sale as aforesaid, and on all other lands on which the taxes are not paid within the time prescribed by law, shall bear an interest of ten per centum per annum until the whole of the taxes due thereon are paid; and no sheriff or collector, or their deputies, shall directly or indirectly purchase any land that shall be exposed to sale for the payment of taxes; and any land purchased by a sheriff, collector, or their deputies, or any other for his or their use as aforesaid, shall be forfeited to the state: *Provided*, however, that no land shall be sold for the payment of taxes, before the first day of September next.

SEC. 20. And it shall be the duty of the auditor to transmit to the sheriffs of the several counties, on or before the first day of July annually, an account of all taxes that have been paid by non-residents for lands listed with him for his county, and of the lands for which such tax was paid, to enable him with certainty to know what lands he shall be obliged to sell for the payment of taxes.

SEC. 21. The claim or claims of no person or persons whatever to lands lying within the limits of that part of this commonwealth which have been ceded or set apart by the authority of the United States, to, or for the use of any particular tribe or tribes of Indians, shall be subject to any forfeiture, fine or tax whatever, until a further act of the legislature for that special purpose.

SEC. 22. Where any collector of the public taxes has appointed one or more deputy collectors, or shall hereafter appoint any such deputy, and he shall fail or refuse to account for and pay to his principal all taxes collected by him, or that were to be collected by him, within the time limited for the collection of taxes, it shall be lawful for such collector to move against such deputy and his

1797.

The land to be exposed to sale annually until sold or tax paid.

Ten per cent. on land tax till paid.

Sheriff not to purchase, &c.

Provido.

Auditor to transmit to sheriffs, accounts of taxes paid by non-residents, &c.

Lands ceded to Indians not liable to taxes, &c.

Remedy against their deputies who fail to account for taxes collected by him.

1797.

securities in the court of quarter sessions in the county ; and the high sheriff shall have power to move against any of his delinquent deputies in like manner for all taxes due from such deputy upon giving him and his securities ten days previous notice of such motion.

Tax on town
lots.

SEC. 23. The owner of every lot in town shall pay three shillings for every hundred pounds of value to which such lot is appraised exclusive of the improvements thereon, and so in proportion for a less value. It shall be the duty of the commissioner to assess or appraise the value of every lot in every town within his district, from the best information he can get, not taking into consideration the improvements thereon, which shall not be appraised : if any owner of such lot shall think himself aggrieved, he shall have a right to appeal to the next county court, who upon due proof being made shall have power to alter such assessed or appraised value as to them shall seem just and right.

And on ped-
lars,

SEC. 24. Every pedlar before he shall vend any merchandize, shall annually obtain a license from some county court within this state for that purpose, for which such pedlar shall pay five dollars to the clerk of the court where such license is granted ; and the clerk shall account for, and pay the same into the public treasury in like manner as other monies that are received by him on public account. And any pedlar who shall be found vending any merchandize without such license, shall be liable to the same fines and forfeitures, and subject to have the same proceedings carried on against him as persons selling spirituous liquors without license.

Penalty for
selling without
licence.

Tax on law
process, &c.

SEC. 25. There shall also be paid the following taxes, to wit : on each original writ or *subpoena* issued from the court of appeals or any district court, the sum of six shillings ; on each original writ or *subpoena* in chancery issued from any other court, three shillings ; on each appeal to the court of appeals, twelve shillings ; on each writ of error, *supersedeas* or *certiorari*, issued from the court of appeals, six shillings ; which taxes shall be paid by the plaintiff as hereinafter directed, and taxed in the bill of costs, and recovered of the party against whom the judgment is entered, as other costs are recovered ; and for each deed recorded for town lots, or other lands,

On deeds.

On county seal.
On state seal.
Now collected.

three shillings ; on the seal of any court, three shillings ; on the seal of the commonwealth, six shillings ; which

V. YEAR OF THE COMMONWEALTH.

669

several sums shall be paid to the clerks of the respective courts from whence such process shall issue, or where such deed shall be recorded, or other proceedings had; and the tax on the seal of the commonwealth shall be paid to, and accounted for, by the secretary in like manner as clerks are herein directed to account for, and pay money into the public treasury. The clerks shall be allowed for collecting, accounting for and paying the said taxes imposed by this act into the treasury of this commonwealth, the sum of five per centum on the money so collected by them or any of them; and they are hereby required to account for, and pay into the treasury aforesaid, some time in the month of November in every year, all money received by them pursuant to this act; and that the amount of the said taxes may be justly ascertained, the said clerks shall make out a fair account yearly, prior to the first day of November, of the sums received by them respectively pursuant to this act; which account the clerk shall deliver to the county court that shall be held in the month of November or December, and make oath that it contains a true and perfect statement of all monies received by him on account of the public; and the court shall order the same to be certified to the auditor, who shall thereupon settle with the clerk agreeable to such account. Every clerk failing to render such account, or failing to pay into the treasury the sum which he shall thereby appear to be indebted to the state by such account, shall, for every such offence, forfeit and pay the sum of one hundred pounds, to be recovered by motion of the auditor in the same manner as is hereby directed to be used against delinquent sheriffs. And the sheriff shall deliver to each person from whom taxes shall be received or collected, a list of his taxable property taken from the copy of the commissioner's books in his hands, with an account of the tax payable and due upon each article in such list; and every sheriff, whenever he shall pay any sum of money into the treasury shall, within three days thereafter, lodge the treasurer's receipt with the auditor, and take a receipt from the auditor therefor; which receipt of the treasurer, the auditor is hereby required and directed to enter in a book to be by him kept for that purpose, and in the same manner he shall enter in his receipt book, the treasurer's receipts for all monies paid into the treasury by non-residents or their agents.

1797.

Clerks allowance for collecting.

Clerks when & how to settle.

Penalty for failure.

Sheriff to deliver list of taxable property.

To take receipt on payment of money into the treasury, and lodge it with the auditor. Who shall enter the same.

1797. This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCVIII.

An ACT to amend an act entitled "an act Subjecting Lands to the payment of Debts."

Approved February 28, 1797.

See the prelection to chap. 55.

Commissioners
to be appointed
& their duty.

No land to be
sold for less
than one fourth
its value.

Proviso.

Debtor may re-
lease land by
giving bond.

SEC. 1. *BE it enacted by the general assembly, That* the courts of quarter sessions in every county shall appoint five persons as commissioners in their county, whose duty it shall be when called on by the sheriff to ascertain the value of any tract or parcel of land which may be taken by execution; and no tract or parcel of land shall be sold by virtue of any execution, unless the price for which it is sold is at least three-fourths of its value in the opinion of the commissioners, any three of whom shall be sufficient to fix or ascertain the value of the land: *Provided always,* that land shall not be taken by execution for debt or damages, if there be slaves or personal property sufficient to pay the debt or damages, unless the defendant should request that his land may be taken instead of the other property; in which case, if he produce to the sheriff levying the execution, sufficient vouchers, or make other proof sufficient to satisfy said sheriff that he has a right to the land so tendered instead of the other property, he shall receive it, and the defendant shall moreover shew the land so tendered, to the sheriff and commissioners before his other property shall be released from the execution. If the land so tendered and received, will not sell for three-fourths of its value in the opinion of the commissioners, the sheriff shall sell so much thereof as will be sufficient to satisfy the debt and costs at three months credit, taking bond and security for the payment thereof, and shall lodge the same in the clerk's office from which the execution issued, under the same regulations as bonds for the delivery of property are now directed by law to be lodged in the clerk's office; and the bonds so taken and lodged shall have the same force as replevy bonds, and shall be proceeded on in the same manner, in case the money shall not be punctually paid; saving, however, to the debtor the right of releasing his land, by giving bond and secu-

rity to pay the money due on the execution in three months from the date ; and if the money shall not be paid on said bond according to the condition thereof, it shall be returned by the sheriff to the clerk's office, and proceeded on as before directed ; but if the sheriff can find no other property to levy the execution on, or not sufficient to pay the same, he may levy the execution on any lands of the debtor that he can find in his county, and shall have the same valued by commissioners as aforesaid, and shall in other respects proceed as before directed by this act : *Provided nevertheless*, that nothing herein contained shall subject lands to the payment of any debt that originated or became due prior to the seventeenth of December, one thousand seven hundred and ninety-two.

1797.

SEC. 2. The commissioners shall be allowed six shillings each for every day they shall attend the valuation of any land, to be paid by the party claiming the same ; and the sheriff shall be allowed the same for attending the commissioners ; to be paid by the defendant or debtor.

Commissioners
and sheriffs al-
lowance.

SEC. 3. *And be it further enacted*, That in all executions hereafter, where the personal property shall be taken and delivered back to the party against whom such execution shall issue, upon bond and security being given for the forthcoming of the property at the day and at the place of sale, if the property shall not be forthcoming at the time and place of sale, according to the tenor of such bond, that the sheriff shall thereon make return of the truth of the case, and the plaintiff in such execution may take out a new execution against the obligors of such bond, without notice being given, or motion made in court on such bond ; on which new execution the clerk shall endorse that no security is to be taken, the sheriff shall proceed to levy the money thereon as in other executions of the like kind. So much of the act "subjecting lands to the payment of debts," as comes within the purview of this act, shall be and the same is hereby repealed.

If bond be given for the delivery of property which shall not be forthcoming at the sale, &c.

Repealing
clause.

This act shall be in force from the passage thereof.

FEBRUARY SESSION,

1797.

CHAPTER CCCIX.

An ACT to amend an act entitled "an act for the division of Clark County."

Approved February 28, 1797.

This act provided that a part of the levies which were laid in Clark county, in December preceding, should be appropriated to the use of Montgomery, in proportion to the number of titheables in each.

CHAPTER CCCX.

An ACT declaring when certain acts shall be in force, and for other purposes.

Approved February 28, 1797.

Certain acts
when to com-
mence & be in
force.

*BE it enacted by the general assembly, That the following acts, to wit: "An act concerning public roads"—"An act to reduce into one the several acts to ascertain the boundaries of and for processioning lands"—An act to reduce into one the several acts respecting wills, the distribution of intestates' estates, and the duty of executors and administrators"—"An act to reduce into one the several acts for the establishment of ferries"—"An act to reduce into one the several acts directing the course of descents"—"An act to reduce into one the several acts concerning mill-dams, and other obstructions in water courses"—"An act containing so much of every act or acts as ascertains the boundaries of the state, and of the several counties," shall commence and be in force from and after the first day of March next; and all acts or parts of acts which come within the purview of the same, shall be and the same are hereby repealed from and after the said first day of March next. Whereas in the twenty-eighth section of the "act to reduce into one the several acts directing the rules and proceedings in the courts of chancery," the words in the eighth line, "to proceed to take such depositions," were omitted between the words "depositions" and "in," both in the enrolled bill and printed copy, whereby the meaning of the said section is destroyed: for remedy whereof, *Be it enacted*, that the said section shall be so construed to all intents and purposes, as if the said words "to proceed to take such depositions" had been inserted in the eighth line of the said section, between the words "depositions" and*

Omission in a
former act.

Supplied & ex-
plained.

V. YEAR OF THE COMMONWEALTH.

673

This act shall commence and be in force from and after the passage thereof.

1797.

CHAPTER CCCXI.

An ACT altering the time of meeting of the General Assembly.

Approved February 28th, 1797.

BE it enacted by the general assembly, That the stated annual meeting of the general assembly shall be in future on the first Monday in January, instead of the first Monday in November.

CHAPTER CCCXII.

An ACT concerning Guardians, Infants, Masters and Apprentices.

Approved March 1st, 1797,

An act of 1705, prohibits any part of the principal of an orphan's estate from being expended for diet, clothing, or any other matter whatever, and says, "that when the estate is so small that no one will maintain him for the profits thereof, such orphan shall be bound apprentice, &c," (chap. VII. sec. 14.) The act of 1748, (chap. 11. sec 9 & 10.) has a provision substantially the same. It may be remarked, that this is a principle of common law, and there is nothing either in the act of 1785, (chap. 86.) or the present act which goes to impugn it.

The following act of 1785, is connected with this subject;

(An act to enable Guardians and Committees to perform certain acts for the benefit of those who are under their care :)

I. *Be it enacted by the general assembly, That where any person under the age of twenty-one years, or of unsound mind is, or shall be seized or possessed of any land, tenements or hereditaments, in trust or by way of mortgage, the guardian of the one, or committee of the other, (which committee shall be appointed by the high court of chancery,) by order of such court made, upon the petition of one or more of the parties interested, and after hearing them all, may execute any such deed, or perform any other such act as the trustee, or mortgagee, if he were of full age, or of sane mind, respectively might have executed or performed, and such deed or other act shall be as valid, except that he shall not be bound by a warranty or other covenant contained in the deed. Also the said court may in like manner empower such guardian or committee to make, or take, a surrender of a former lease, and to take, or make, a new lease, as the case may require, and as it shall seem most for the advantage of the infant, idiot, or lunatic, out of whose estate any fine that may be advanced & all other just expences that may be incurred in order to obtain a new lease to him, shall be reimbursed, and the new lease shall not only be chargeable with such fine and expences, but shall remain subject to all incumbrances which the lease surrendered would have been subject to.*

II. *This act shall commence and be in force from and after the first day of January, one thousand seven hundred and eighty-seven.*

SECTION 1. BE it enacted by the general assembly, That the several county courts within this common-

1797. **County courts to have cognizance of all matters relating to orphans. Take security of guardians. Penalty for failure.** wealth within their respective jurisdictions have, and shall have, full power and authority from time to time, to take cognizance of all matters concerning orphans and their estates, and to appoint guardians in such cases where to them it shall appear necessary, and shall take good security of all guardians by them appointed for the estates of the orphans to them respectively committed; and if any court shall commit any orphan's estate to the charge or guardianship of any person or persons without taking good and sufficient security for the same, in such case the said justices appointing such guardian, or committing such estate, and every of them, shall be liable for all loss and damage sustained by the orphan for want of such security, to be recovered with costs by action at the common law in any court of record, at the suit of the party grieved: *Provided always*, that where the securities were good at the time of their being so accepted and taken, but afterwards became insolvent, in such case the justices shall not be liable.
- Proviso.** SEC. 2. Any father, even if he be not twenty-one years of age, may, by deed, or last will and testament, either of them being executed in presence of two competent witnesses, grant or devise the custody and tuition of his child, which had never been married, although it be not born, during any part of the infancy of such child, to whomsoever he will; and such grant or devise heretofore or hereafter to be made, shall give the grantee or devisee the same power over the person of the child as a guardian in common socage hath, and authorize him by action of ravishment of ward or trespass, to recover the child with damages for the wrongful taking or detaining him or her for his or her use, and for the same use to undertake the care and management, and receive the profits of the ward's estate, real and personal, and prosecute and maintain any such action and suits concerning the same as a guardian in common socage may do. The court of every county within the limits of their jurisdiction, shall have power from time to time to control guardians, and hear and determine all matters between them and their wards, to require security of any guardian in socage or statutory guardian, when that caution shall seem necessary, for prevention of any damage his ward may suffer by neglect, mismanagement or malversation, and if the security be refused or delayed, or if
- Father may devise tuition of child.**
- Powers of such justices.**
- Power of county court over guardians, &c.**

such guardian appears to have been guilty of a flagrant abuse of trust, to displace him and appoint another in his stead, and to give such directions and to make such rules and orders as they shall think fit for the government, maintenance and education of wards and preservation of their estates, and for the conduct of guardians. Every court appointing a guardian shall take bond of him, with sufficient security, for the faithful discharge of his office ; and if any court omit this duty, or take such security as shall not satisfy them of his sufficiency, which may be done as well by the security's affidavit as otherwise, the ward by an action on the case against the justices so making default, may recover so much of the damages which the guardian and security shall be answerable for, as these shall be unable to pay. If any guardian refuse or be unable to give the security required of him, the court may put the estate into the hands of a curator, the fittest they can prevail upon to undertake the care of it, to be accountable to them ; and in that case they shall not be responsible for his ability. Every guardian or curator to be appointed by any court shall, at the term or session next afterwards, deliver into such court an inventory upon oath of all the estate which he shall have received, to be entered of record in a separate book ; and such guardian or curator, and every guardian heretofore so appointed, shall exhibit to such court once in every year in August, or at the next session, if there be none in that month, or oftener if he be specially required, accounts of the produce of the estate, of the sales and disposition of the produce, and of the disbursements ; which accounts shall be examined by the court, or by such person as the court shall refer them to, and being found and certified, or reported to be properly and fairly stated, and the articles thereof to be justified by the vouchers, and the report in case of a reference being approved and confirmed by the court, shall with such certificate or confirmation be entered of record in the book aforesaid ; and if any article of such accounts at any time afterwards be excepted to by the ward, or his representative, it shall be incumbent on him to prove or shew the falsity or injustice thereof, unless notice on his behalf shall have been given at the time of passing the accounts, that such article would be excepted to, and a memorandum of such notice shall have been entered on record, or

1797.

To take security of guardians, &c.

Curator appointed if guardian fail to give security.

Duty of guardian.

How the ward may except to guardian's accounts.

1797.

Compel guardians to give supplemental security. If they fail in their duty.

Respecting the ward's estate.

If security like to suffer, guardian to give counter-security.

Guardian's estate liable for orphan's dues.

desired to be entered. The court at any time when they shall know, or have cause to suspect that a surety of a guardian is failing, may require and compel such guardian to give supplemental security, or if he refuse or neglect to do so, may displace him. A guardian who shall not deliver in such inventory, and render such accounts as aforesaid, shall by order of the court to which he is amenable, be summoned, and if he remain in default, be compelled to perform his duty, or be displaced : for which purpose the summons or other process from a county court, may be directed to, and executed by the sheriff of any other county where the guardian may be found ; and every justice of the court sitting therein at any time during the term of session at which the process ought to have been ordered, if it be not ordered accordingly, shall be amerced. If the disbursements of the guardian being suitable to the estate and circumstances of the ward, shall exceed the profits of his estate in any year, the balance, with the allowance of the court, may be debited in the account of a succeeding year, and a balance appearing on the contrary side may be put out to interest for the benefit of the ward, upon such security as the court shall approve ; or the guardian if it remain in his hands, shall account for the interest, to be computed from the time his accounts were, or ought to have been passed. If any security for a guardian by petition to the court before whom they were bound, setting forth that he apprehends himself to be in danger of suffering thereby, shall pray that he may be relieved, the court after a summons to answer the petition, shall have been served upon the guardian, or a copy of such summons shall have been left at the place of his usual abode, shall order him to give counter security, or to deliver the ward's estate into the hands of the surety or some other, in that case taking sufficient security, or may make such other order for relief of the petitioner as to them shall seem just. The estate of a guardian not under a specific lien, shall after his death be liable for whatsoever may be due from him on account of his guardianship to his ward, before any other debt due from such guardian. When the claim of any infant or infants to land, shall interfere with the claim or claims of any other person or persons, it shall and may be lawful for the guardian of such infant or infants to settle such dispute with the proprietor

or proprietors of the interfering claim of claim, by submitting the same to reference agreeably to the arbitration laws that may be in force: and the award of the referees shall be entered up as the judgment of the court to whom the said award shall be returned, and shall be as binding on such infant or infants, and proprietor or proprietors of the interfering claim or claims, as if the same were determined by a decree of the court according to the usual forms of law. Every orphan who hath no estate, or not sufficient for maintenance out of the profits, shall by order of the court of the county in which he or she resides, be bound apprentice until the age of twenty-one years if a boy, or of sixteen years if a girl, to some master or mistress, who shall covenant to teach the apprentice some art, trade or business, to be particularized in the indenture, as also reading and writing, and if a boy, common arithmetic, including the Rule of Three, and to pay him or her three pounds and ten shillings, and a decent new suit of clothes at the expiration of the time; which indenture shall be approved by the court and recorded.

1797.

Orphans to be bound out.

Indenture.

SEC. 3. Any guardian may with the approbation of that court in which his appointment shall be recorded, and not otherwise, bind his said apprentice to such person for learning such art or trade, and with such covenants on the part of the master or mistress as the said court shall direct; and any such apprentice with the like approbation, or any apprentice bound by his father, may, with the approbation of the court of that county in which the father shall reside, after he shall be sixteen years of age, agree to serve until he be twenty-one years of age, or any shorter time; and any such agreement entered on record shall bind him.

Ward bound out under direction of court

SEC. 4. The courts of every county shall at all times receive the complaints of apprentices or hired servants, being citizens of any one of the United States, who reside within the jurisdiction of such court, against their masters or mistresses, alledging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging, or want of instruction: and may hear and determine such cases in a summary way, making such orders thereupon as in their judgment will relieve the party injured in future, or removing the apprentices and binding them to other masters or mistresses when it shall

Courts to receive complaint of apprentice against master.

1797
 And master a-
 gainst appren-
 tice,

seem necessary; and may also in the same manner hear and determine complaints of masters or mistresses against their apprentices or hired servants for desertion without good cause, and may oblige the latter for loss thereby occasioned, to make retribution by further services after the expiration of the times for which they had been bound.

CHAPTER CCCXIII.

An ACT concerning Tithables, and directing the mode of laying and collecting the County Levy.

Approved March 1st, 1797.

Who shall be
 deemed titha-
 bles;

SEC. 1. *Be it enacted by the general assembly,* That all male persons of the age of sixteen years and upwards and all female slaves of the age of sixteen years and upwards, shall be, and they are hereby declared to be tithable, and chargeable for defraying the levies, except such only as the county courts may by reason of age, infirmity, or other charitable reasons, exempt from the payment of public taxes.

Commissioners
 of the tax to
 take list of tith-
 ables.

SEC. 2. The commissioners of the tax within the several counties of this commonwealth shall, and they are hereby required and empowered at the same period in each year in which they are collecting lists of the taxable property in their respective districts, under the act, entitled, "An act to amend and reduce into one, the several acts establishing a permanent revenue," to demand from each person being tithable, or having in his or her possession such as are tithable, a written list of such as are tithable persons in his or her family; which list the said commissioners respectively shall arrange in a column, to be by him reserved for that purpose in his book of taxable property. And where any person or persons shall settle himself in any county in any of the years in which by the said recited act no commissioner is directed to take in his list of taxable property, it shall be the duty of such person to enter all the persons belonging to his family subject to the payment of the county levy, with the clerk of the court in the same manner in which he is directed to enter his list of property, and shall be subject to the same penalty for a neglect; which list it shall be the duty of the clerk to return to the court at the time of laying the levy for such county.

Tithables to be
 entered with the
 clerk in certain
 cases.

SEC. 3. The master or owner of a family, or in his or her absence or non-residence at the plantation, his or her agent, attorney, or overseer, shall at the time appointed by this act in a list under his or her hand, deliver, or cause to be delivered, to the commissioner of the tax for that district, the names and numbers of all tithables abiding in, or belonging to his or her family, the ninth day of March preceding the time of delivering in such list, or the master or owner thereof; or in case of his or her absence, or non-residence, the overseer shall be adjudged a concealer of such, and of so many tithables as shall not be listed or given in; and for every tithable person so concealed, shall forfeit and pay five hundred pounds of tobacco, one moiety for the use of the county towards lessening the levy thereof, and the other moiety to the use of the informer, to be recovered by action of debt or information in any court of record. And when any overseer shall fail to list the tithables on any plantation whereon he is overseer, the master or owner shall be subject to the payment of their levies in the same manner as they would have been if they had been listed. And if any commissioner of the tax shall not truly list and enter the names and numbers of his own tithables in that district or county for which he is appointed, he shall forfeit and pay one thousand pounds of tobacco, to be recovered and applied as aforesaid: *Provided always*, that if any owner or overseer shall happen by sickness or otherwise, to omit delivering his or her list to the commissioner of the tax at the time the same may be required, it shall be lawful for such person to send his or her list to the house of such commissioner, at any time before he makes his return to the clerk of the county as aforesaid, which shall discharge him or her from the penalty aforesaid. The justices of the several county courts within this commonwealth, or a majority of them, shall, and they are hereby authorised and empowered at their courts respectively to be held in the months of October or November annually, (or as soon after as may be, if no court should be held in either of those months) to proceed to make up in their minutes an account of all expences incurred by the said court under authority of any law chargeable on the county, and remaining unpaid, stating therein the sums due, for what, and to whom due, and all credits owing to the said county: when the balance

1797

Masters, &c. of families, to make out lists of their tithables & deliver them to the commissioner of tax.

Penalty for failure.

Penalty on the commissioner for not listing his tithables.

Proviso.

At what courts justices go settle their county charges and expences.

1797.
And lay the
levy.

Clerks to deli-
ver lists of per-
sons chargeable
with levies.

How county
creditors may
recover their
dues from the
sheriffs.

County courts
may give judg-
ment against
sheriffs failing
to account.

due from the county is thus ascertained by deducting the sums due to the county from those owing by the county, the said justices shall proceed to levy and assess on the tithable persons in their respective counties the amount of that balance in equal proportions; the sums due to the county, and the sums to be assessed on the tithables, being added together, shall then be appropriated by the court, so as to shew the right of such county creditor, and the amount of his demand. The clerks of the county courts respectively shall, within ten days after the levy has been apportioned by the court as aforesaid, deliver to the sheriff or collector, a list of the persons as aforesaid chargeable with the payment of levies, and the sum to be paid by each for his county rate; and also a list of the sums due to the said county, and of the persons from whom due; as also of the persons to whom the same ought to be paid, with the amount of their respective demands. The said sheriff or collector shall immediately proceed to collect from the persons chargeable therewith the sums due to the said county, and the county rates settled as aforesaid, with the same powers and for the same commission as in the case of public taxes, and shall pay the same to the county creditors according to their respective demands.

SEC. 4. If any sheriff or county collector shall fail to account with, and satisfy the county creditors as aforesaid the respective sums levied for them, or either of them, on or before the first day of October annually, or shall fail to adjust and settle the amount of his collection with the county by the said first day of October annually, it shall and may be lawful for any county creditor who may be injured by such delinquency, to obtain judgment against such sheriff or collector, his or their heirs, executors, administrators or securities, in the court of that county where the delinquency happened, upon giving ten days previous notice to such delinquent sheriff or collector, his or their heirs, executors, administrators or securities. And it shall and may be lawful, where such sheriff or collector fails to account with the county as aforesaid, for the court for that county before whom he ought to account, to enter judgment against such delinquent sheriff or collector, for whatever shall appear to be due from such sheriff or collector, and award execution thereon, giving such sheriff or collector

ten days previous notice of such proceeding. The court of each county shall, and they are hereby authorised and empowered at the time of settling their county levy as aforesaid, to appoint the sheriff of their county, or any other person, collector of their county levies, taking from the person so appointed a bond, in the penalty at least of double the sum to be collected, payable to the justices of the county so appointing him, with two or more responsible securities, conditioned for the faithful collection, accounting for and paying the several sums wherewith he shall be chargeable as sheriff or collector of the county in the manner directed by law.

1797.

Court may appoint any person collector of levies, Taking bond and security.

SEC. 5. If any clerks of the county courts shall fail to deliver to the collector of the county levies, the lists hereby required to be delivered to him, at the time and in the manner required by law, such clerk so omitting, shall, for each offence, forfeit and pay the sum of ten pounds, to be applied and recovered as aforesaid. Each collector of the county levies appointed as aforesaid by the court, may appoint one or more deputies to assist him in his collections, for whose conduct he shall be answerable; which deputy shall have the same power as the collector himself: and such collector shall have the same remedy and mode of recovery against his deputies, or either of them, and their securities respectively, for any sums of money which by virtue of this act such collector may be subject to the payment of on account of the transactions of any of his deputies as the collector himself is subject to by law.

Penalty on clerk failing to deliver lists to the collector.

Collector may appoint a deputy.

Collector's remedy against his deputy failing to account and pay, &c.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCXIV.

An ACT for the appropriation of Money, and for other purposes.

Approved March 1st, 1797.

The first and second sections merely contained the usual and ordinary appropriations, and are therefore omitted.

SEC. 3. *And be it further enacted,* That the governor is hereby authorised to employ some person to convey the laws to the clerks of the several counties, and shall make such allowance to him as may appear just, and

Governor empowered to employ a person to convey the laws &c.

1797.

In what manner
shall be distrib-
uted.

give an order to the auditor for a warrant. The laws shall be distributed in the following manner, to wit : one copy to each justice of the peace, and each judge of the court of quarter-sessions ; one copy to each judge of the district courts and judges of the court of appeals ; to the judge of the federal court one copy ; to the clerk of every superior and inferior court one copy ; to each commonwealth's attorney for the district courts or courts of quarter-sessions, one copy ; to the auditor, treasurer, secretary and register one copy each ; to each state in the union one copy ; to each member of the legislature and their clerks one copy.

County courts
of Nelson and
Mason empow-
ered to levy mo-
ney to dig wells
&c.

SEC. 4. *And be it further enacted*, That the county courts of Nelson and Mason, are hereby directed to levy as much money on the tithables in their counties as will be sufficient to dig a well and fix a pump on the public ground at each court house.

No district at-
tornies to be
appointed for
Frankfort, Bour-
bon and Lex-
ington.
The attorney-
general to prose-
cute in said dis-
tricts.

Provido.

SEC. 5. *And be it further enacted*, That the judges of the district courts shall not appoint any attorney for the districts that include Frankfort, Bourbon and Lexington, any law to the contrary notwithstanding : and it shall be the duty of the attorney general to prosecute on the part of the commonwealth in all cases in each of the districts aforesaid : *Provided however*, that in case of resignation of the attorney-general, or refusal to act, the judges of the district courts aforesaid shall appoint an attorney as for other districts. The attornies for the commonwealth in the district courts shall receive for their services annually the sum of thirty pounds, to be paid out of the public treasury.

Allowance to
the district at-
tornies.

CHAPTER CCCXV.

An ACT for encouraging and granting relief to Settlers.

Approved March 1, 1797.

See the prelection to chapter 220.

Who shall be
entitled to a set-
tlement.

SECTION 1. *BE it enacted by the general assembly*, That any widow and free male person of the age of twenty-one years, and every other person having a family who shall settle upon the vacant and unappropriated land south of Green river, on or before the first day of July, one thousand seven hundred and ninety-eight, and reside thereon one year, clear and fence two acres of ground and tend it in corn; shall be entitled to two and not less

than one hundred acres, to include such improvement in any part of the survey which they may express in their entry : *Provided*, that no person shall obtain a certificate for any settlement made on the lands ceded by congress to any Indian tribe. 1797.
And to what quantity of land. *Provido*.

SEC. 2. Every person who shall be entitled to a settlement by virtue of this act, shall lay in their claim before the commissioners hereinafter appointed when sitting for that purpose ; describing the bounds of his or her lands, and have there his or her witnesses to prove their right to said settlement ; and every claim shall be surveyed as nearly in a square as the interfering claims will admit of. Settlers to lay in their claims before the commissioners, &c.
Which shall be surveyed in a square.

SEC. 3. There shall be paid by every person to whom a settlement is granted, into the treasury of this state, for each hundred acres of first rate land in that part of the country, sixty dollars ; and for every hundred acres of second rate land, forty dollars ; and every person obtaining a settlement, who shall fail or neglect to pay the same accordingly into the treasury, and take the treasurer's receipt therefor, and lodge the same with the auditor, and take his receipt for the same, within twelve months from the date of his or her certificate, his or her land shall be forfeited to the state, and be liable to be disposed of in any manner the legislature may in future think proper to direct. Price of the lands.
Land forfeited if the money be not paid in a certain time.

SEC. 4. Each settler obtaining a certificate agreeably to this act, shall enter the same with the surveyor of the county in which the land lies, and shall have the same surveyed, and return a plat and certificate of such survey to the register of the land-office of this state, within twelve months from the time of obtaining such certificate, and the register shall demand and receive the usual fees, and issue a grant as in other cases : *Provided*, however, that the patent shall not issue until the claimant shall produce to the register the auditor's receipt for the payment of the money for such claim into the treasury ; and every surveyor with whom an entry is made on any claim granted by this act, shall cause the same to be entered in a well bound book provided for that purpose, and shall file the commissioner's certificate as his voucher. How the settlers are to have their claims entered, surveyed and patented.

SEC. 5. And for the purpose of ascertaining who shall be entitled to a settlement agreeably to this act, there shall be appointed by the governor three persons, not be- Three commissioners to be appointed.

1797. ing members of the present general assembly, who shall
 Their power & be stiled commissioners, who, or any two of them, shall
 duty. have power and authority to hear and determine the
 right of persons to settlement agreeably to this act, and
 to determine the class to which such land shall belong,
 according to the evidence which shall be produced to
 them, or from their own knowledge, at courts to be hol-
 den by them at the following places, to wit: At the
 Shall sit, when court-house in Lincoln county, on the first Monday in
 and at what August, one thousand seven hundred and ninety-eight;
 places. at the court-house in Green county, on the first Monday
 in September, one thousand seven hundred and ninety-
 eight; at the court-house in Warren county, on the first
 Monday in October, one thousand seven hundred and
 ninety-eight; at the court-house in Logan county, on
 the third Monday in August, one thousand seven hun-
 dred and ninety-eight; and at the court-house in Chris-
 tian county, on the third Monday in September, one
 thousand seven hundred and ninety-eight; to continue
 by adjournment ten days at each place, if the business
 before them shall require it; and the said commissioners
 shall have power to compel the attendance of witnesses,
 and examine them touching any thing material to the
 matter in question, and shall have power to hear and de-
 termine all disputes between settlers, during their sitting,
 who shall claim under this act, and award costs on the
 decision of any such contest as to them shall seem right:
 and in all disputes between settlers respecting the priori-
 ty of settlement, the improvement first made shall have
 the preference; but no person shall obtain a certificate for
 more than one improvement.
 Further powers. SEC. 6. The commissioners shall appoint a clerk,
 whose duty it shall be to make out a certificate to each
 person to whom a claim shall be hereby granted, de-
 scribing particularly the bounds of said person's claim
 agreeably to the location handed into the court by such
 person; which certificate shall be signed by the com-
 missioners, and the said clerk shall enter the locations in
 a book or books to be by him provided for that purpose;
 and such book or books after being signed by the com-
 missioners, shall be lodged in the register's office, and
 shall be admitted as testimony, or a copy therefrom at-
 tested by the register, in any future disputes between set-
 tlers.

No person to obtain a certificate for more than one improvement.
 Commissioners shall appoint a clerk.
 His duty,

SEC. 7. And for the purpose of paying the said commissioners, their clerk, and for books and papers, there shall by each person to whom a claim is granted, be paid to the clerk before he delivers to such person a certificate, one dollar, to be disposed of as hereinafter directed. And the sheriff of the county in which the said commissioners are herein directed to sit, shall attend by himself or deputy, to perform to them the necessary duties of his office; and he shall be entitled to the usual fees for any services he may perform, to be paid by the party requiring the same, exclusive of six shillings per day, which he shall receive for his attendance on the said court, to be paid by the clerk out of the tax arising on certificates granted by this act.

1797.

One dollar to be paid for each certificate.

Sheriff of the county to attend the commissioners, His fees.

SEC. 8. Each of the said commissioners shall receive for his services twelve shillings per day, and the clerk twelve shillings, whilst they are travelling to, attending on, and returning from said courts; and the clerk shall moreover be entitled to one shilling for each certificate for a settlement as aforesaid, and one shilling for entering the same in a book: and the clerk after paying the sheriff and commissioners, and retaining as much money as will pay for his services, books and paper, shall pay the balance, if any, into the treasury, and take the treasurer's receipt therefor, which he shall lodge with the auditor.

Commissioners' and clerk's allowance.

SEC. 9. The surveyors of the counties including any part of the boundary on the south side of Green river, known by the name of the military boundary, shall immediately apply to the surveyors of the Virginia state and continental lines residing in this state, for copies of all entries in their respective offices made on military warrants in the boundary aforesaid, and the surveyors of the said lines shall give to the surveyors of the counties aforesaid, copies of all such entries within four months from the passage of this act, and may demand and receive from the surveyors to whom they deliver the same, six-pence for each entry, to be paid by said surveyors: and the surveyors of the counties aforesaid, on receiving the copies of such entries, shall enter the same in well bound books, to be provided by them for that purpose; and such surveyors may demand and receive for the copy of each entry, one shilling from the person receiving the same.

Surveyors of counties including any part of the military boundary to procure copies of all entries on military warrants, &c.

And pay six pence for each entry. Said surveyors may demand one shilling for a copy of each entry.

1797.

Persons obtain-
ing a settlement
to reside thereon
one year
Or forfeit his
right thereto.

No person hav-
ing obtained one
settlement shall
be entitled to
another.

SEC. 10. Any person who shall obtain a settlement by virtue of this act, who shall not reside thereon, either by himself, or his or her representatives, at least one year next succeeding the date of his or her certificate, shall forfeit all his right, title and interest, he or she may have in such settlement, and the same shall revert to the commonwealth, and may be disposed of by the legislature; and no person who obtained a certificate for a settlement from the commissioners appointed under the authority of the act passed in the year one thousand, seven hundred and ninety-five, entitled, "an act for the relief of the settlers on the south side of Green river," shall be entitled to a certificate for a settlement under this act.

Further time
given to former
settlers to pay.

And for enter-
ing their certifi-
cates.

Provido.

Salt licks and
springs reserved
to the state.

Provision for
those who have
settled on mi-
litary claims

SEC. 11. *And be it further enacted,* That any person who obtained a certificate for a settlement agreeably to the before recited act, and have failed to pay the amount thereof into the treasury, as by the said act is directed, shall have further time until the first day of November next, to pay the same, without the forfeiture of the land, and pay five per centum interest thereon; and any person who obtained a certificate for a right to a settlement and neglected to enter the same within the time limited by law with the surveyor, shall have further time until the first day of November next to enter the same in the surveyor's office, and shall proceed to complete his or her title as by the aforesaid act required: Provided always, that nothing in this act contained shall be so construed as to destroy the claim of any settler for an improvement made before the passage of this act so near to the improvement of an older settler, that the quantity of two hundred acres cannot be obtained by each, if such claim would have entitled the younger settler to a settlement under the act of the last session, entitled, "an act for the relief of settlers on the south side of Green river;" and that all and every salt lick and salt spring, with one thousand acres of land adjoining and around each, to be laid off in a square by lines at the cardinal points, as near as the interfering claims will admit of, shall be, and they are hereby reserved to the state; and if a grant shall be obtained therefor it shall be void.

SEC. 12. And when any person through mistake may have settled on a military claim that shall have obtained a certificate from the commissioners for such settlement

in conformity to the said recited act, it shall be lawful for such person at any time on or before the first day of November, to remove him or herself and settle on any vacant and unappropriated land on the south side of Green river, and shall make an entry thereof in the surveyor's office for the county in which the land lies, accompanied by the commissioner's certificate, and shall then proceed to compleat his or her title, in like manner as is directed by the said recited act. 1797.
through mistake.

SEC. 13. *And be it further enacted*, That the governor shall cause so much of this act as he may think necessary, to be published without delay in four newspapers of the most extensive circulation in the United States, the expence of which shall be defrayed out of the public treasury. Any act or acts that come within the purview of this act shall be, and the same are hereby repealed. Governor to have this act published.
Repealing clause.

This act shall commence and be in force from the passage thereof.

CHAPTER CCCXVI.

An ACT to amend an act, entitled, "an act for opening a road to Cumberland Gap."

Approved March 1st, 1797.

WHEREAS, an act passed at the last session of assembly, entitled, "an act for opening a waggon road to Cumberland Gap," it is provided that a road should be opened from the neighborhood of Madison court-house to intersect a road by the said act directed to be opened from the Crab Orchard to the Cumberland Gap; and as the same hath been neglected, and it is represented to the present general assembly that opening the said road would tend to public utility: therefore, Preamble.

SEC. 1. *BE it enacted by the general assembly*, That the governor be authorised to appoint two fit persons, one of whom shall live on the north side of the Kentucky river, for the purpose of opening a road from the neighborhood of Milford in the county of Madison, the nearest and best way that can be had, to intersect the road opened last summer under the before recited act, and the sum of five hundred pounds, in addition to what remains of the sum appropriated by an act passed in the year one thousand seven hundred and ninety-five, is hereby appropriated for the purpose of opening the said A road to be opened from near Milford to intersect the wilderness road.
Sum of money appropriated for that purpose.

1797. <sup>Powers, emolu-
ments, &c. of
the commissioners of the
road.</sup> road, to be paid in like manner as the money appropriated by the said recited act was directed to be paid. The commissioners appointed by this act shall possess the same powers, be governed by the same rules and regulations, and be entitled to the same emoluments for their services as those appointed to carry the before recited act into execution. There also shall be a sum not exceeding five hundred dollars, for the purpose of repairing the road opened through the wilderness to Cumberland Gap ; and Joseph Crockett one of the commissioners under the authority of the before recited act, is hereby authorised and empowered to employ persons for the purpose of repairing the same, and draw upon the treasurer accordingly, who shall pay the amount out of any money in the treasury on receiving the auditor's warrant for the same.

<sup>A turnpike to
be erected on
said road.</sup> SEC. 2. *And be it further enacted,* That the said Joseph Crockett shall be appointed a commissioner, whose duty it shall be to erect a turnpike at some convenient place, and purchase as much land as may be necessary for that purpose, not exceeding two acres, on the road leading from the Crab Orchard to Cumberland Gap, beyond where the road leading from Milford intersects said road ; and the said commissioner shall have power to contract with any person he may choose for the purpose of erecting the same ; and may direct the auditor to issue a warrant to the person for any sum not exceeding sixty dollars. The commissioners of the road and of the turnpike afore-mentioned, shall, and they are hereby directed, as soon as may be, after the passage hereof, to advertise for four weeks successively, in both the public papers of this state, that the turnpike is to be farmed out to the highest bidder, and they shall appoint some day and place of meeting for the purpose of receiving offers for farming the same, which shall be inserted in the said advertisement ; and they shall then and there let out for one year, to commence on the first day of May next, to the highest bidder, the said turnpike, and shall take bond and sufficient security, payable to the governor for the time being, for the due and faithful payment of the sum agreed on for the same ; and the person farming the said turnpike shall have the right and privilege to receive the rates hereinafter mentioned for passing the same : *Provided however,* that the aforesaid commissioners may, if

<sup>Money appropri-
ated therefor</sup>

<sup>Turnpike to be
farmed out.</sup>

<sup>Bond and secu-
rity to be taken</sup>

^{Provido.}

to them it shall seem more advantageous to the state, let out said turnpike for one year by private contract. And no money shall be drawn from the treasury for repairing the said road on which the turnpike shall stand, but from the money that may arise from the use of the turnpike.

1797.

Profits of the turnpike how appropriated.

SEC. 3. The keeper of the turnpike shall be entitled to receive the following toll for passing the same : For each person, except post-riders, expresses, and women and children under the age of ten years, nine-pence ; for every horse, mare or mule, nine-pence ; for every carriage with two wheels, three shillings ; for every carriage with four wheels, six shillings ; and for every head of neat cattle going to the eastward, three-pence. And if any person shall forcibly pass or attempt to pass the said turnpike before paying the fees aforesaid, or avoid or attempt to avoid it, they shall forfeit and pay ten dollars for the use of the keeper of the turnpike ; and it shall be lawful for the keeper to retain such person or persons in his custody until the same shall be paid. The bond taken from the keeper of the turnpike shall be returned by the commissioners to the auditor, and in case of failure to comply with the same, the same proceedings shall be had thereon as against other public defaulters. And no member of the present legislature shall be appointed a commissioner under the authority of this act. And should the said Joseph Crockett decline to perform the duties enjoined him by this act, the governor shall appoint another person in his stead.

Rates of passing.

Penalty for forcibly passing.

Bond given by the keeper.

No member of present legislature to be commissioner

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCXVII.

An ACT to reduce into one the several acts for the Conveyance and Division of Lands.

Approved, March 1st, 1797.

See the prelection to chap. 50.

WHEREAS, many persons die intestate, having previous to their death made sales of lands without executing deeds of conveyance therefor, or transferring the same, or having made a will, shall not in such will have authorised his executors, or some other person, to make such deeds or assignments in performance of his contracts, for which if suits in law or equity should be instituted by the persons possessing from such contract an equitable claim in such lands, it would tend greatly to the

Preamble:

injury of the estate of such decedent: for remedy whereof,
 Sec. 1. *BE it enacted by the general assembly, That*
 where any person has died, or shall hereafter die intestate, leaving his heirs, or any of them infants, or having made a will, shall not in such will have authorised his executors or some fit person, to make deeds of conveyance, or to transfer, or make assignments in performance of his contracts, and having previous to his death executed bonds, or other instruments of writing, binding him to convey any tract of land, or to assign over any plats and certificates, by which the title to the same may be transferred. That in every such case it shall and may be lawful for the county court in which the land lies, and they are hereby required, on the application of the guardian or guardians of any such infant or infants, in conjunction with the other heirs of such decedent, if any there be, or on the application of any person to whom such bond, or other instrument of writing may be executed or assigned, if it appears to the satisfaction of such county court that the consideration agreed on has been paid the decedent, to appoint three fit persons as commissioners, who in conjunction with the heirs above twenty-one years of age, if any there be, shall have full power and authority to convey such tract or parcel of land, or to assign any plat and certificate of survey thereof, agreeably to the tenor of the bond or other instrument in which the decedent bound himself and heirs to convey, or assign the same. All which conveyances and assigns shall be as valid and binding upon the heirs, as if made by the decedents in their life-time. Every writing under which any conveyance or assignment is to be made by the authority of this act, shall be recorded in the county court to which application shall be made as aforesaid, at the time commissioners are appointed for the purpose herein mentioned: *Provided however*, that nothing in this act shall be so construed as to prevent the infant representatives of such decedent from instituting suits to recover such lands, or a compensation in damages from the person or persons to whom it shall have been conveyed, if any fraud shall have been practised in obtaining the same. And whereas many inconveniences may arise to the citizens of this state, and great injury sustained, not only to individuals, but likewise to the commonwealth, by lands lying undivided, held in conjunction with non-residents, and such non-residents not

having agents in this state to attend to such division ; for remedy whereof,

SEC. 2. *Be it enacted*, That if the owners of lands within this state who are non-residents, do not attend to have the same divided, where a part of the same is claimed as locator, otherwise by bond or other instrument, by any citizen of this commonwealth, or where one non-resident claims part of any lands as aforesaid, held by another non-resident, and such non-residents have not divided their lands, and they or either of them have failed to appoint agents in this country for that purpose, the courts of the several counties within this state shall appoint six commissioners in each county, who, or any two of them, shall, when called upon for that purpose by the citizens of this commonwealth, or the owners of lands who are non-residents, or their agents, attend and make such division agreeable to the contract entered into by the parties ; for which such commissioners shall receive six shillings per day each, whilst in service, at the joint expence of the parties, to be paid in the first instance by those employing of them ; and such commissioners shall convey to the person having the equitable claim, the part that he is entitled to ; which deed of conveyance shall be returned to the county court of the county in which the lands shall lie, together with the bond or instrument of writing, agreeable to which the division was made, there to be recorded ; which deed of conveyance shall effectually vest the legal title in such person : nevertheless nothing herein contained shall prevent a re-division from taking place, provided the first is found not to be equal : *Provided also*, that such re-division shall be made within two years thereafter, and so as not to affect any improvement that may be made in consequence of the first division : and *provided always*, that if any time hereafter it should appear that there was any fraud in the contract, division or manner of obtaining the same, that the whole proceedings, or so much thereof as is necessary to do justice between the parties, may be set aside in a court of equity.

SEC. 3. That where lands are held in conjunction by citizens of this state, either as joint tenants, tenants in common, or by contract, and either party shall refuse when called on for that purpose, to divide the same, it shall and may be lawful for the other to proceed to the

1797

Where lands
are held in con-
junction.

Commissioners
appointed.

Who shall make
division.

Re-division
may be made.

1797

Where one party is infant or *feme covert*.

Court may appoint guardian for infant.

Infants, &c. may have re-division when of lawful age.

Proviso.

A joint owner of land may save his part from forfeiture by paying the tax therefor.

same manner to obtain such division. And when either party shall be an infant or *feme covert*, it shall and may be lawful for the guardian of such infant or infants, or the husband of such *feme covert* to make a division of any land or lands held in conjunction as aforesaid by such infant or infants or *feme covert*, with any other person or persons. And all such divisions and deeds of conveyance made agreeably thereto, shall be recorded in the county where such land so divided may lie. And if the person or persons holding lands in conjunction with such infants or *feme coverts*, do not attend to have such division made by themselves or agents, or if the guardian of such infant or infants, or husband of such *feme covert* when called upon by the other party, shall refuse to attend, in either case the party requiring such division may proceed in like manner as is before directed. And when any person may desire a division of lands held in conjunction with an infant or infants, and such infant or infants have no guardian, it shall and may be lawful for the party desiring such division, to apply to the court of the county wherein the land may lie, to appoint a guardian to such infant or infants who may proceed to such division agreeably to the directions of this act: *Provided however*, that nothing herein contained shall be so construed as to prevent any infant or infants, or *feme covert* from having a re-division within one year after such infant may arrive at age, or such *feme covert* become sole as the case may be, provided it shall appear to the court of the county in which such land may lie, that any fraud was practised in making such division to the injury of such infant or *feme covert*: *Provided also*, that such re-division shall not affect any actual settlement made in consequence of the first division, and the clerk may demand and receive three shillings for every record so made, to be paid by the party requiring the business to be done.

SEC. 4. And where no division can be had in any land held in conjunction, it shall be lawful for either party to enter his proportion of such land with the commissioners, and pay the tax thereon, which shall save so much of the said land from forfeiture: *Provided however*, that if any of the divisions and conveyances of lands made agreeable to this act, should be rendered unequal or unjust by interfering prior or better claims, being hereafter established to the same, or any part thereof, in

V. YEAR OF THE COMMONWEALTH.

693

that case the party injured, shall be entitled to a redi-
vision, but in such a manner, if practicable, as not to affect
any actual settlement that shall be made on the same.

1797.

CHAPTER CCCXVIII.

*An ACT to alter the times for holding certain Courts,
and for other purposes.*

Approved March 1, 1797.

See the preface to chap. 265.

SECTION 1. *BE it enacted by the general assembly,*
That from henceforth the court of appeals shall hold
two sessions in every year, to wit: The one beginning
on the first Wednesday in May, and the other on the
first Wednesday in October in every year, and no more.
Rules shall be held in the office of the said court by the
clerk four times in every year, to wit: On the Wednes-
day succeeding the first Monday in February, the Sa-
turday succeeding the first Wednesday in May, the
Wednesday succeeding the first Monday in August,
and the Saturday succeeding the first Wednesday in
October. The court shall direct and regulate the pro-
ceedings as to the rules, and appoint such return days as
to them shall appear proper. The district court for the
district composed of the counties of Mason and Camp-
bell, shall hereafter be held on the third Monday in Fe-
bruary, June and October in every year, instead of the
second Mondays; and the district court for the district
composed of the counties of Fayette, Madison, Clark
and Scott, shall be held on the third Monday in Novem-
ber, instead of the third Monday in October in every
year. The court days of Montgomery county after the
first day of April next, shall be on the first Tuesday in
every month, and the courts of Logan county shall be
held, after the first day of April next, on the second
Tuesday in every month, instead of the fourth Tuesday.
The court of quarter sessions for the county of Bour-
bon, shall, after the first day of April next, be held on
the third Mondays in the months of February, May,
August and December in every year. If any process
or writs of whatever kind, are, or shall be issued to any
of the first terms of the courts, the time of the sitting of
which are hereby altered, they shall be returned to the
courts as herein before directed to be held, and shall be
as valid to all intents as if made returnable thereto; and
all bonds and recognizances taken for the appearance of

Two annual
sessions in the
court of appeals

Time of courts
in Washington
changed.

In Lexington.

In Montgome-
ry.
and Logan.

Bourbon.

Process to be
returned to said
courts.

1797.

any person or persons at any of the said courts, shall be as valid to all intents and purposes to compel an appearance at the courts as herein are directed to be held, as if taken for their appearance at such courts.

Writs, &c. to
be served be-
fore return day.

SEC. 2. *And be it further enacted*, That any original writ or process issuing from any court of common law or chancery, may be served at any time before the return day thereof, notwithstanding there be not three days between the service and return day of such writ or process; and any such writ or process may be taken out during the sitting of the court from which it shall issue, and may be served and returned to any day of said court, any law to the contrary notwithstanding.

Repealing
clause.

So much of every act or acts as comes within the purview of this act shall be and the same is hereby repealed. This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCXIX.

An ACT for the relief of certain Sheriffs, Venires and Witnesses.

Approved February 27th, 1797.
They had attended under the requisition of the then existing law, at the place of holding courts of Oyer and Terminer, but that court having been suddenly abolished, they received no pay for so doing. This act gave them compensation; all its provisions were temporary and specific, and have had their effect.

CHAPTER CCCXX.

An ACT authorising a Lottery.

Approved February 27, 1797.
This act authorised raising 1000 dollars by lottery for draining a pond contiguous to Versailles. If the lottery was not drawn within 12 months, the purchasers of tickets were authorised to demand and recover back the price of them.

CHAPTER CCCXXI.

An ACT for the relief of the Sheriff of Nelson.

Approved February 21, 1797.
By a misconstruction of the revenue law, he had collected only three-fourths of the tax for 1796. This act allowed him six months to collect the other fourth.

CHAPTER CCCXXII.

An ACT concerning the marriage of Rebecca Owens.

Approved March 1st, 1797.
This act authorised her to sue in the Lincoln quarter session court, her husband John Owens, and declared that his power over any property which she had acquired since their separation, or might thereafter acquire, should

V. YEAR OF THE COMMONWEALTH.

695

cease ; if a jury in that action should find that he had deserted her, and was living in adultery with another woman.

1797.

CHAPTER CCCXXIII.

An ACT concerning Public Advertisements.

Approved March 1, 1797.

SEC. 1. *BE it enacted by the general assembly, That* all advertisements of a public nature which shall be published in the Kentucky Herald after the passage of this act, shall be as good and valid in law as if they had been published in the Kentucky Gazette ; any law to the contrary notwithstanding.

CHAPTER CCCXXIV.

An ACT providing for the first election of trustees under the act entitled "an act for the better regulation of the town of Paris, and vesting the trustees with additional powers."

Approved March 1, 1797.

SEC. 1. *BE it enacted by the general assembly, That* the first election of trustees for the town of Paris, under the act entitled "an act for the better regulation of the town of Paris, and vesting the trustees with additional powers," shall be held on the third Friday in March in the present year, and forever thereafter on the day fixed by the above mentioned act.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCXXV.

An ACT directing the mode of taking the sense of the People respecting a Convention.

Had its effect.

Approved February 21, 1797.

CHAPTER CCCXXVI.

An ACT for selling two tracts of Land of which John Ellis died seized.

Approved February 21, 1797.

He had died intestate, leaving eleven children and two small tracts of land. This act appointed commissioners and authorised them in conjunction with the guardians of such of the children as were infants, to sell the lands for cash, or on credit, as they should judge most beneficial to the children, and make conveyances therefor.

CHAPTER CCCXXVII.

An ACT concerning the marriage of Henrietta Wherns.

Approved February 27th, 1797.

This act authorised her to sue her husband, Jacob Wherns, in the quarter

1797.

session court of Bourbon, for a Divorce; and to obtain it, on a jury's finding that he had been guilty of an act of Betiality since marriage.

CHAPTER CCCXXVIII.

An ACT for the relief of col. Lewis, a Chickasaw Indian, and his company.

Approved March 1st, 1797.

The relief given, was 40l. out of the treasury. The act is silent as to the motive for giving it.

CHAPTER CCCXXIX.

An ACT for the relief of Elizabeth Hatton.

Approved February 27, 1797.

She was the widow of Robert Hatton, who had died intestate, seized of some lots in Frankfort. This act appointed commissioners to sell some of them for her support.

CHAPTER CCCXXX.

An ACT giving additional days to certain Courts of Quarter Sessions.

Approved February 24, 1797.

Had its effect.

CHAPTER CCCXXXI.

An ACT to ascertain the enumeration and list of taxable property within the Counties of Garrard and Bracken.

Approved February 27, 1797.

Had its effect.

CHAPTER CCCXXXII.

An ACT making further provision for the Public Jailor of the Franklin District.

Approved February 27, 1797.

This act made him an additional allowance of 20l. on account of the great number of prisoners who had been committed to his care, and the high price of provisions.—It has long since had its effect.

November Session, 1797.

CHAPTER CCCXXXIII.

An ACT giving further time to the owners of Lands, to survey the same, and for returning Plats and Certificates to the Register's Office.

Approved November 29, 1797.

See the prelection to chap. 38.

Preamble.

WHEREAS it appears that an act passed by the assembly of Virginia, in the year of our Lord one thousand

seven hundred and eighty-five, entitled "an act to repeal an act entitled an act concerning entries and surveys on the western waters," which has been continued by subsequent acts of the legislature of Virginia and this state, may subject the owners of entries to forfeiture of the same, if the requisitions of the said acts should not be complied with ; for remedy whereof,

1797.

SEC. 1. *Be it enacted by the general assembly,* That the further time of ten months from the last day of November, one thousand seven hundred and ninety-seven, be allowed the owners of entries to survey the same, in any part of this state, which is not set apart by treaties for any tribe of Indians : *Provided,* however, that no forfeiture shall arise to the claimants of entries within the boundary ceded by congress to the Indian tribes, until further provided for by the legislature ; and that the further time of two years be given to survey all entries made, either to adjoin the line to be run between this state and Virginia, or the line adjoining the lands reserved for the officers and soldiers south of Green river, or any entries dependent on such entries, any law to the contrary notwithstanding.

Further time of
ten months given
to survey
entries.

No forfeiture
of certain lands.

SEC. 2. *Be it further enacted,* That the further time of one year be allowed for returning all plats and certificates of survey to the register's office : *Provided,* that nothing in this or any other act shall extend to forfeit or make void any entry claimed by infants, *feme covert*s, persons *non compos mentis* or prisoners in captivity, but that all such persons shall have three years after their several disabilities are removed, to complete the same.

One year allowed
to return
plats and certificates,
&c.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CCCXXXIV.

An ACT for the appropriation of Money.

Approved November 30, 1797.

This act merely provided payment for the expences incurred at this session, and allowed 100 dollars to the Chickasaw Indians, then at the seat of government.

INDEX

OF

PUBLIC AND PRACTICAL LAW.

VOLUME I.

It may be necessary to apprise the reader that where a similar provision has been enacted at different sessions, a double reference will be found in the index, both as to the year and the pages in this volume where it is to be found.

A.

ABATEMENTS.

Page.

- See Civil Proceedings, Nos. 87, 88, &c.
Abatement, plea of, see Civil Proceedings, Nos. 51 and 54, and Partition No. 4.
Abatement, plea of, in chancery—See Chancery, No. 44.

ABSENT DEFENDANTS.

Session of 1795.

1. Where a suit in chancery shall be commenced against some defendants resident in the district [state 1796] & others out of the state, those in the state may be restrained from paying over money or delivering over goods by them owing, &c. to those out of the state, 314
2. If the absentees do not enter their appearance and give security for performing the decree, 314
3. An affidavit made that such defendants are out of the state or could not be found, the court may require security of the defendants in the district, [state, 1796] against secreting the debts owing or the goods in their hands, 314
4. They may order such debts to be paid, or goods to be delivered over to the complainant on giving security for the return of them, [1796,] 315
5. They shall appoint some day of the succeeding term for the absent defend-

- ants to appear and give security for performing the decree, [1796.] 593
6. A copy of such order shall be published in the news paper two months successively, at the door of the court-house and such meeting house as the court shall direct, [1796.] 315
7. If the defendants do not appear on that day and give security the court may take such proof as the complainant shall offer, and being satisfied with the justice of the demand, may order the bill to be taken *pro confesso* and decree accordingly, [1796] 315
8. On good cause shewn they may give further time for appearance and answer, [1796] 593
9. On rendering a decree for the complainants, they shall require security from them for returning the money or the goods upon the defendants appearance and answer, [1796] 315
10. If the complainant shall fail to give such security, the effects shall remain under the direction of the court, to be disposed of as they shall think just, [1796] 315
11. Any person out of the state when the decree was pronounced against him or in case of his death, his executors or administrators returning and appearing openly within seven years, shall be served with a copy of the decree [1796] 594
12. Within twelve months after such service, they may petition for a rehearing, [1796] 315

4 R

13. On payment of costs or giving security therefor, they shall be admitted to answer, and such proceedings shall be had as if no former decree had been in the cause, [1796] 316
- Session of 1796.*
14. Otherwise such decree shall be final 594
15. The defendants not served with a copy of the decree shall have seven years after their return to petition for a rehearing 594
16. All defendants not obtaining a rehearing in the one or the other of these modes, shall be completely barred, 594
17. All conveyances made subsequent to the commencement of the suit shall be over-reached by the decree, 594
18. In all cases in chancery against absent defendants, on satisfactory proof that they are out of the commonwealth or on enquiry at their usual places of abode they could not be found, the court may make an order similar to that in the case of absent debtors, adapting it to the nature of the case, 595
19. A copy of this order shall be published in like manner as is provided for in the case of absent debtors, and if no appearance be entered, the complainant may proceed as if an appearance had been entered, 595
20. Such absent defendant may within seven years, file an answer and shew cause why the decree should be set aside, 595
21. Upon this the court shall make such decree as to them shall seem equitable 595
- ACTIONS.**
- Joint, may be brought against heirs and executors, or administrators, 128
- against justices for a fine, 475
- against heirs and devisees, 598
- Real, see Civil Proceedings, No. 106, &c.
- Personal, see Civil proceedings, Nos. 1, 2, 3, 4, &c.
- Penal, See Limitation of Actions.
- ADMINISTRATIONS.**
- See Wills.
- AMENDS.**
- See Civil Proceedings No. 85.
- AMERCEMENTS.**
- See Civil Proceedings, Nos. 73, 74 & 75.
- APPEALS.**
- See Court of Appeals.
- From Magistrates, see county courts, Nos. 9, 10, 11, 12, &c. and Nos. 28, 29, &c.
- APPEARANCE.**
- See Civil Proceedings, No. 6.
- APPRENTICES.**
- See county courts Nos. 54 to 62, and Guardians, Nos. 16, 17 & 18.
- ARBITRATIONS.**
- Act, concerning, [repealed in 1798] 327
- ASSEMBLY, GENERAL.**
1. Either house of the legislature or their standing committees may lend for persons, papers or records for their information, on any subject before them, 292
 2. Privileges of the members, 292
 3. Members guilty of a breach of privilege may be fined or expelled, 292
 4. Proceedings and punishment for contempts or breaches of privilege by other persons, 292
 5. Serjeant at arms to execute the orders of either house, 293
 6. Witnesses, their privileges and allowance, 293
 7. Fines imposed under this act, how levied, 293
 8. Oaths, may be administered by the clerks, 293
- ASSIGNMENTS—1796.**
- [Repealed, Jan. session, 1798.]
1. All writings made assignable, 509
 2. Assignees may sue in their own names, 509
 3. Not to affect the species of action or defence, 509
 4. Actions of covenant may be brought on writings not under seal, 509
- ATTACHMENTS—June 1792.**
1. A justice of the peace may issue an attachment for a debt under five pounds, returnable before himself, or some other justice, [1796] 93
 2. Must take bond and security previous to issuing it, [1796] 93
 3. A justice of the Quarter Session court may issue an attachment, (1.) where a debtor is removing out of the county privately, (2.) where the creditor makes oath that he hath grounds to suspect, and doth verily believe, that his debtor intends to remove his effects privately, 96
 4. But in both cases, the debt claimed must be of the value of five pounds, 96
 5. Such attachments shall be returnable to the court of quarter-sessions, and proceeded in according to the

- law regulating attachments in the county courts 96
- November Session, 1792.*
6. Justices of the peace may issue attachments returnable to the court of quarter-sessions, [1796] 157
- November Session, 1796.*
7. On complaint made that a debtor is removing out of the county privately, or absconds and conceals himself so that the ordinary process of law cannot be served upon him, 595
8. Such attachment shall be directed to the sheriff, or where he is interested to the coroner, 595
9. The attachment may be levied on the slaves and goods of the person absconding wherever they may be found, or in the hands of any persons indebted to him, or having his goods in possession, 595
10. Such persons shall be summoned as garnishees to appear at the next court and answer on oath as to the debts owing and goods in his possession, at the time of leaving the attachment, 595
11. On the summons being returned executed, the court may compel such garnishee to appear and answer, 595
12. Before granting an attachment, the justice shall take bond with security in double the sum to be attached, 596
13. Such bond shall be conditioned for the payment of all costs which may be awarded, and all damages and costs which may be recovered for suing out such attachment, 596
14. This bond shall be returned to the court to which such attachment is returnable, and every attachment issued without such bond taken and returned, shall be void, 596
15. All attachments shall be replevable on putting in good bail, being ruled so to do by the court, or giving bond with security to the officer serving the same, 596
16. Such bond the officer is required to take, and it shall be for the defendants appearance at the court to which the attachment is returnable and abiding by the judgment of the court, 596
17. If he does not appear accordingly, and give special bail, the sheriff and security shall be subject to the same judgment and recovery, and entitled to the same defence and relief, as if such bond had been taken on the execution of mesne process, 596
18. Attachments returnable before a justice of the peace shall be proceeded on as those returnable to the court or quarter-sessions, 596
19. If the goods attached be not replevied, the plaintiff shall have judgment for his whole debt, 597
20. All goods attached and not replevied shall be sold towards satisfying the debt as goods taken on *fiat facias*, 597
21. Judgments may be entered, and executions issue against garnishees, for all sums which they owe, and all goods in their possession shall be liable to satisfy the judgment, 597
- ATTACHMENTS, Judicial.
See Civil Proceedings, Nos. 36, &c.
- ATTACHMENTS, in Chancery.
See chancery, Nos. 23, &c.
- ATTORNEY GENERAL.
November, 1792.
To attend the legislature and draft bills, 176
[*The above act repealed in 1793.*]
- ATTORNEYS—1796.
1. No person shall practice as counsel or attorney until he has obtained a licence from two judges of the court of appeals or district court, 365
2. Such licence may be obtained on producing to them a certificate from the court of any county that the person applying is a person of honest demeanor, & being found qualified on due examination, 365
3. Every counsel or attorney, before permitted to practice, shall swear or affirm to demean himself honestly, and execute his office according to the best of his learning and ability, 365
4. No persons convicted of treason or felony, or wilful and corrupt perjury, shall practice as counsel or attorney, 365
- ATTORNEY, Letters of,
Of recording, 152
See also conveyances.
Powers of, what void, see Civil Proceedings, No. 100.
- AUDITA QUERELA.
See Courts of Quarter-Sessions, No. 19.
- AUDITOR OF PUBLIC ACCOUNTS.
To be appointed, 36
His duties, 59, 60, 264 & 265
May require counsel of the attorney-general, 905

B.**BAIL,**

Appearance—See Civil Proceedings, Nos. 1, 2, 3, &c.

Special—See Civil Proceedings, Nos. 18, 22, &c.

In Criminal cases—see Criminal Proceedings, Nos. 10 and 11.

BASTARDY,

Proceedings in cases of, 282, 283, & 184
See Descendants.

BILLS OF EXCHANGE—1793.

The drawers and endorser of bills of exchange on persons out of the state coming back with a legal protest, subject to 10 per cent. damages, besides legal interest, 178

BOATMEN.

Contracting in writing to perform a voyage and refusing, compellable to do it by warrant from a justice of the peace, 262

BONDS.

See Civil Proceedings, No. 91.

C.**CAVEATS.**

November Session, 1792.

1. Fifteen days after a caveat has been entered an attested copy shall be returned to the clerk's office of the court where it is meant to be prosecuted, 159

—[1796]
2. The same proceedings shall be had thereon as heretofore in the supreme court of Kentucky, 159

Session of 1796.

3. The person who files a caveat shall express therein the cause why a grant should not issue, and the nature of the right on which he founds his claim, 501

4. He shall file at the same time an affidavit with the register, that it is entered *bona fide* for the benefit of the plaintiff, and not collusively for the benefit of the defendant, 501

5. All caveats entered contrary to this act, shall be null and void, 501

6. The clerk on issuing a summons for the defendant in a caveat shall recite the cause for which the caveat was entered, 501

7. When a summons on a caveat shall either not be returned, or be returned not executed, the caveat shall be dismissed with costs, 501

8. Unless the court shall be satisfied that the plaintiff has been guilty of no negligence, 501

9. On the process being returned executed, the court shall determine the right in a summary way without pleading in writing, 501

10. A jury shall be empanelled to enquire of facts not admitted by the parties and a judgment rendered, on which no appeal or writ of error shall lie, 501

11. A copy of such judgment in favor of the defendant delivered into the land office in three months, shall vacate the caveat, 501

12. If not delivered within that time a new caveat may for that cause, issue, 501

13. If the judgment is for the plaintiff, he must file it with his plat and certificate of survey, and a certificate of new rights within six months, 501

14. If he fails so to do, any other person may for that cause, enter a caveat against his grant, 502

15. On a subsequent caveat, the same proceedings shall be had as on an original caveat, 502

16. Where judgment on a caveat is given for the defendant, the court shall award him costs, 502

17. Where it is given for the plaintiff, they may award him costs if they think proper, 502

18. They may compel the plaintiff to give security for costs, or dismiss his suit, 502

CAVEATS UNDER THE LAWS OF VIRGINIA.

See Land Law.

CLERKS.

See Courts respectively.

CLAIMANTS, OCCUPYING.

1. Persons deducing a title to lands from record, without notice of an adverse title, and evicted, not to be liable for rents, damages, &c. prior to the receipt of actual notice, 642

2. Court giving judgment of eviction, to appoint seven persons, who shall value the improvements made prior to notice, and also the damages done to the land, and return it to court, and it shall be entered as a judgment, 643

3. Execution may issue on it, unless the successful claimant gives bond for the payment in 12 months, 643

4. Bond shall have the force of a judgment, 643
 5. But if the balance be in favor of the successful claimant, judgment shall be entered up in his favor, and proceeded on as aforesaid, 643
 6. The value of improvements made after notice to be assessed; also of the rents and profits, 643
 7. The land in dispute to be valued; and if the improvement exceed the value of the land, successful claimant may convey it to the occupying claimant, and shall have judgment for the value, which may be proceeded on as aforesaid, 644
 8. Commissioners to take oath, 644
 9. May summon witnesses, 644
 10. How to make their assessment, 644
 11. Allowance to be made by the court, 644
 12. Where the parties arbitrate, the same proceedings to be had as in the case of a suit, 645
 13. What shall be notice of an adverse claim, 645
 14. Who shall be bound by it, 645
- CHANCERY.
- Session of 1795.*
1. The complainant shall file his bill, within three months after *subpoena* returned executed, or his suit shall stand *ipso facto* dismissed with costs, [1796] 312 521
 2. If the defendant does not file his answer within three months after the filing of the bill, an attachment may issue [1796] 312 522
 3. On the attachment returned executed, or a copy left, if he fails to appear or refuses to answer, the bill may be taken *pro confesso*, and the matter of it decreed, (1796) 312 522
 4. Or the complainant may have a general commission to take depositions, [1796] 312 522
 5. Or he may move to bring in the defendant to answer interrogatories, [1796] 312 522
 6. In the two last cases, he may proceed as if answer had been put in and the cause was at issue, [1796] 312 522
 7. Where a general commission shall issue, on answer and replication, six, (five by the act of 1796) months shall be allowed the parties for taking depositions, 312 526
 8. At the end of six months either of the parties may set the cause for hearing, [1796] 312 526
 9. No deposition taken after that time shall be read, except taken by consent of parties, by special order of court or out of the state, [1796] 312 526
 10. Upon a bill's being voluntarily dismissed, or dismissed for want of prosecution, costs shall be taxed and process of contempt returnable to the next court [any return day, 1796] 312 521
 11. The complainant may amend his bill before the defendant has taken a copy, or in a small matter afterwards without costs, [1796] 313 521
 12. But in other cases he shall pay the costs occasioned by the amendment [1796] 313 521
 13. Process of contempt shall not issue except on return or affidavit of service, [1796] 313 522
 14. A defendant may swear to his answer before a justice of the peace, [1796] 313 522
 15. The defendant to a cross bill shall not be compellable to answer until the first bill is answered, [1796] 313 523
 16. The complainant shall reply or file exceptions within two calendar months, [1796] 313 523
 17. If he fails to do so, a rule may be given to reply; if on the expiration of the rule, he still fails, his bill may be dismissed with costs, [1796] 313 523
 18. Exceptions to answer are to be filed with the clerk, and a rule given for a better answer within two calendar months, [1796] 313 523
 19. If within that time the defendant puts in a sufficient answer, it shall be received without costs, [1796] 313 523
 20. If the defendant fails to do so or insists on the sufficiency of his answer, the complainant may set down the exceptions to be argued at the next court, [1796] 313 523
 21. On a second insufficient answer, no further answer shall be received but on payment of costs, [1796] 313 523
 22. If upon argument the exceptions are over-ruled or the answer adjudged insufficient, such costs shall be allowed the prevailing party as the court may think proper, [1796] 313 523
 23. Upon a second answer adjudged insufficient, the costs shall be doubled [1796] 313 523
 24. On a third answer adjudged insufficient, the defendant may be examined on interrogatory, and committed until he shall answer, [1796] 313 523

25. If after process of contempt an insufficient answer is put in, the complainant may proceed with the process of contempt as if no answer had been filed, [1796] 313 } 524
26. A rejoinder shall not be filed after the expiration of the rule to rejoin, [1796] 314 } 524
27. If the complainant conceives a plea or demurrer to be naught, for matter or manner, he may set it at the rules to be argued, [1796] 314 } 524
28. If he thinks it good, but not true, he may take issue upon it, and proceed to trial by jury, [1796] 314 } 524
29. If the plea shall be found false, the complainant shall have the same advantage of it, as if it had been so found in a suit at common law, [1796] 314 } 524
30. If a plea or demurrer be overruled, no plea or demurrer shall be ever after received, [1796] 314 } 524
31. If the complainant shall not reply or set for hearing, any plea or demurrer at the second rule day after filing it his bill shall be dismissed with costs [1796] 314 } 524
32. On demurrer argued and overruled costs shall be paid as where an answer is adjudged insufficient and the defendant shall answer within two calendar months afterwards, [1796] 314 } 524
33. But if adjudged good, the defendant shall have his costs, [1796] 314 } 524
34. If a defendant after demurrer overruled, shall refuse to answer, the bill shall be taken for confessed, and the matter decreed, [1796] 314 } 526
- Session of 1796:*
35. The complainant may insert in his bill, as many defendants as he pleases though they claim under different titles, 521
36. But any defendant disclaiming, shall be entitled to costs unless for special reasons it is otherwise decreed, 521
37. Each defendant shall recover all costs incurred in a claim in which he is not interested, 521
38. The court for good cause shewn may permit an answer to be filed after a bill had been taken *pro confesso*, and grant a further day for hearing, 522
39. If an attachment shall be returned not executed, an attachment with proclamation may issue; and if on the return thereof, no answer shall be put in, the bill shall be taken *pro confesso*, 522
40. The defendant may introduce into his answer new matter material to his defence, and call on the complainant to answer it, 522
41. The complainant shall answer it in the same time and under the same rules and regulations as the defendant is compellable to answer, 522
42. Where it is necessary for the defendant to bring a new party before court he shall state it in his answer, and insert interrogatories to him, 522-3
43. Thereupon a subpoena shall issue and other proceedings be had as in cases of other defendants, 523
44. After answer filed, and no plea in abatement, no exception to the jurisdiction of the court shall ever be taken, 523
45. Nor shall justice be refused or delayed, or the judgment reversed for want of jurisdiction, unless it is for land lying out of the jurisdiction of the court, 523
46. After an attachment with proclamation returned, no plea or demurrer shall be received unless by the order of court on motion, 524
47. Bills to perpetuate testimony, may be brought by any number of persons claiming under different rights, subject to the rules abovementioned as to costs, 524
48. The complainant on the coming in of the answer, may have a commission and proceed to take the depositions of his witnesses on reasonable notice, 524
49. Any person having a claim to land in the state, may file a bill to perpetuate testimony concerning such claim, 525
50. On making affidavit that he knows of no adverse claimants, or of none but those whom he has made defendants, he may have an order to advertise, 525
51. Such advertisement shall be inserted six weeks in an authorized paper, and there shall be four months between the first insertion and the time of taking depositions, 525
52. Such advertisement shall mention the present name of the county where the land lies, and the present names of the water courses, and an exact copy of the certificate or entry, or both, 525
53. Depositions thus taken may be used against any person afterwards setting up a claim to such land, provided there be returned with the depositions, the gazettes in which the advertisements were inserted, and the printer's affidavit of publication, 525
54. As to the defendants actually made

- to the bill, if they do not answer within three months after subpoena executed, depositions may be taken on giving notice to their attorney at law, 525
55. If they have no attorney, on filing notice in the clerk's office twenty days before taking the depositions, 525
56. Any person having a legal title to, and actual possession of land, may file a bill against any person setting up a claim to it, 526
57. If the complainant establishes his claim, the defendant shall be decreed to release and pay costs, 526
58. But if the defendant shall in his answer disclaim and offer to release, the complainant shall pay costs, unless for special reasons, otherwise ordered by the court, 526
59. Where either party has been called on for a discovery on oath, and the fact to which the discovery was prayed shall be submitted to a jury, the answer put in as to such fact, shall be laid before the jury, as the practice is in issues tried at law, under the direction of a court of chancery, 526
60. In all cases of taking depositions where not otherwise specially directed, the opposite party shall have reasonable notice, unless he resides out of the state, 526
61. Where he resides out of the state, notice shall be given to the attorney in fact, notified in the clerk's office to have been appointed, 526
62. Where no notice has been given of the appointment of such agent, notice shall be given to the attorney at law, 526
63. No notice shall be necessary to any defendant except those whom the depositions are to be used against, 526
64. On bill filed and affidavit made to age, infirmity, &c. of witnesses, a commission for taking their depositions *de bene esse*, 526
65. Writs of *ne exeat* shall not be granted but upon bill filed and affidavit to the truth of its allegations, 527
66. Thereupon the court or two judges or justices in vacation, may grant or refuse such writ, as to them shall seem just, 527
67. If granted, they shall direct to be endorsed thereon, in what penalty, bond and security shall be required, 527
68. If the defendant by his answer, shall satisfy the court that there is no reason for his restraint, or give sufficient security to perform the decree, the writ may be discharged, 527
69. No injunction shall be granted unless the matter in dispute be of value sufficient to admit of original jurisdiction in the court to whom application is made, 627
70. Nor unless the court in term time, or one judge or two justices in vacation, shall be satisfied of the plaintiff's equity by affidavit or otherwise, 527
71. The complainant shall enter into bond with security, approved by the judges or justices for paying the judgment at common law, and the costs in chancery, if the injunction shall be dissolved, 527
72. The several courts of chancery may direct an issue to be tried whenever they shall deem it necessary, 528
- See Absent Defendants.
See also Vol. II. Chaps. 151, 201, 294, 295, and Vol. III. Chap. 500.
- ### CIVIL PROCEEDINGS.
- [The reader will observe that as far as these rules depend on the act of 1795, they were applicable to district courts only—as far as they depend on the act of 1796, to all courts of original jurisdiction; but the circuit court (now having adopted the rules of the district court, they are now by a two-fold authority the laws of the circuit court.)]
- Session of 1795.*
1. The defendant shall not be held to appearance bail, except in actions of debt founded on a writing obligatory, (bill or note in writing for the payment of money or tobacco, 1796) { 303
covenant and detinue, } 492-3
2. In such actions the true species of action shall be endorsed on the writ and that bail is required, [1796] { 303
} 493
3. In all other personal actions, the true species of action shall be endorsed and that bail is not required, { 303
} 492
5. Where bail is demanded, the sheriff shall return the names of the bail endorsed on the writ, and a copy of the bail bond to the office before the day of appearance, (1796) { 304
} 493
6. If the defendant shall fail to appear or fail to give special bail, being ruled thereto by the court, the bail for appearance may defend the suit, subject to the same judgment as the defendant would have been if he had given special bail, (1796) { 304
} 493

7. In actions of detinue, the bail-piece shall be so changed as to subject the bail to the restitution of the thing sued for, or the alternate value, as the court shall adjudge, (1796) § 304 } 493
8. If the sheriff shall not return bail, and a copy of the bail bond, or shall return insufficient bail, and the defendant shall fail to give special bail, being ruled so to do, the sheriff shall stand in the place of appearance bail, (1796) § 304 } 493
9. If the sheriff shall die before judgment confirmed, it shall be confirmed against his executors, administrators or estate, as the case may be, and a writ of *scire facias* in either case may issue, (1796) § 304 } 493
10. The plaintiff shall object to the sufficiency of bail during the sitting of the court next succeeding that to which the writ is returnable, or in the office on the first or second rule day, and not afterwards, (1796) § 304 } 493-4
11. All questions concerning bail, objected to in the office, shall be determined by the court at their next succeeding term, (1796) § 304 } 494
12. Where the bail is adjudged insufficient, the sheriff shall have the same remedy against his estate as against the estate of the defendant, (1796) § 304 } 494
13. Every judgment against defendant and bail, or defendant and sheriff, may be set aside, if the defendant at the succeeding court, shall be allowed to appear without bail, shall put in bail or surrender himself in custody, & plead to issue immediately, (1796) § 304 } 494
14. The court shall regulate the proceedings in the office during the preceding vacation, and rectify any mistakes or errors which have happened therein, (1796) § 304 } 494
15. Where judgment shall have been confirmed against a bail, sheriff, his representatives, or estate, the court may on motion order an attachment returnable to the next court, (1796) § 304 } 494
16. On the return of such attachment, executed, the court shall order as much of the estate seized as will satisfy the judgment and costs to be sold (1796) § 304 } 494
17. The sale shall be as of goods taken on a *scire facias* the judgment and costs satisfied, and the surplus restored to the defendant, (1796) § 305 } 494
18. Any judge of the district court, or any justice of the peace may take recognizance of special bail in any action in said court depending (1796) § 305 } 494
19. The recognizance so taken, shall be returned before the succeeding court, and filed in the cause (1796) § 305 } 494
20. If the plaintiff means to except notice shall be given thereof ten days before the exception is taken (1796) § 305 } 494
21. If such bail be adjudged insufficient the recognizance shall be discharged and such proceedings had as if no bail had been taken, (1796) § 305 } 494
22. Every special bail may surrender his principal before or after judgment, to the court where the suit is depending, (1796) § 305 } 495
23. Such surrender must be before the appearance of the first *scire facias* returned executed, or the second returned *nihil*, (1796) § 305 } 495
24. In either case, the bail shall pay the costs of the *scire facias*, and judgment shall be entered therefor (1796) § 305 } 495
25. On such surrender the bail shall be discharged, and the defendant committed to the custody of the sheriff or jailor on the request of the plaintiff, (1796) § 305 } 495
26. The special bail may discharge themselves by surrendering the defendant to the sheriff of the county where the writ was served, (1796) § 306 } 495
27. Such sheriff shall receive the defendant and commit him to the jail of his county, and give a receipt for his body, which report shall be transmitted to the clerk of the court where the suit was brought (1796) § 306 } 495
28. Where the surrender is made after judgment, the sheriff shall keep the defendant as a debtor committed in execution for the first twenty days, (1796) § 306 } 495
29. The bail shall give immediate notice of such surrender to the creditor or his agent, (1796) § 306 } 495
30. If the creditor shall not charge him in execution within the 20 days, he shall be forthwith discharged out of custody, (1796) § 306 } 495
31. But execution may be afterwards sued out against him without *scire facias*, (1796) § 306 } 495
32. When a defendant is committed to prison for want of appearance bail, the plaintiff may proceed, and he may defend as if appearance bail had been entered and accepted, (1796) § 306 } 495

33. Where the defendant shall be committed after an appearance, the plaintiff shall file his declaration, give a rule to plead, and a copy of each to the defendant or his attorney, (1796) § 306 } 496
34. If the defendant shall not plead within two months after he receives, the plaintiff shall have judgment by default, (1796) § 306 } 496
35. On a *capias* returned *non est inventus*, the plaintiff may sue out an *alias* or *pluries* until the defendant is arrested, or a *testatum capias* where he shall have removed into another county, (1796) § 306 } 496
36. Or he may sue out an attachment against his estate, and if he shall not appear and replevy the goods, being ruled so to do, the plaintiff may file his declaration and have judgment (1796,) § 306 } 496
37. This judgment shall be final in all actions of debt founded on specialty or note in writing, ascertaining the demand, unless the plaintiff chooses to have a jury, (1796,) § 307 } 496
38. In all other cases there shall be a jury to enquire of damages, (1796) § 307 } 496
39. The goods attached shall remain in the hands of the officer, until final judgment, and then be sold as goods taken on *fieri facias*, (1796) § 307 } 496
40. If the judgment be not satisfied, execution may go for the balance if more goods than are necessary to satisfy the judgment are attached, the surplus shall be returned to the defendant, (1796) § 307 } 496
41. If a writ shall be executed, and for want of a return, a subsequent process shall issue, the sheriff shall not execute it, but return the writ, if in his possession, (1796) § 307 } 496
42. If not in his possession, he shall return the subsequent process with an endorsement of the execution of the writ, the name of the bail, & a copy of the bail bond, (1796) § 307 } 497
43. Rules shall be held monthly in the clerk's office beginning on a day to be fixed by the court, (1796) § 307 } 497
44. The plaintiff shall file his declaration at the next rule day after the defendant has entered his appearance, (1796) § 307 } 497
45. Or the defendant may then enter a rule for the plaintiff to declare, (1796) § 307 } 497
46. If the plaintiff fails to declare at the next rule day, or at any time afterwards fails to prosecute his suit, he shall be non-suit, (1796) § 307 } 497
47. When a plaintiff is non-suit, he shall pay 45 shillings, where the defendant's residence is twenty miles distant or under, and 2 pence per mile for all over. And by the act of 1796, 150 lbs. of tobacco, where the defendant's residence is distant 25 miles, and 5 lbs of tobacco for every mile over, besides costs, § 307 } 497
48. One month after the plaintiff has filed his declaration, he may give a rule to plead, (1796) § 307 } 497
49. If the defendant shall not plead, at the expiration of the rule he may enter a judgment for his debt or damages, (1796) § 307 } 497
50. All rules to declare, plead, reply, rejoin, or other proceedings, shall be given regularly, from month to month and shall expire on the succeeding rule day, (1796) § 307-8 } 497
51. No plea in abatement shall be received, unless verified by oath or affirmation, (1796) § 308 } 498
52. No plea of *non est factum* shall be received, unless verified by oath or affirmation, (1796) § 308 } 498
53. Where such plea is offered by a defendant other than the obligor, he shall swear or affirm to his belief that it is not the deed of the obligor, (1796) § 308 } 498
54. On a plea of abatement over-ruled, the plaintiff shall recover full costs, except a lawyer's fee, (1796) § 308 } 498
55. The plaintiff in replevin, and the defendant in every other action, may plead as many matters of law or fact as he shall deem necessary for his defence, (1796) § 308 } 498
56. On the return of a *pluries non est inventus*, the court may order a proclamation warning the defendant to appear on a day therein named, or that judgment will be entered against him, (1796,) § 308 } 498
57. This proclamation shall be published on three successive court days, at the door of the court house to which the last process was directed, and three times in the Kentucky Gazette or Herald, (1796) § 308 } 498
58. If the defendant shall fail to appear,

- judgments shall be entered against him } 308
as in case of default, (1796) } 498
59. All office judgments not set aside on or before the third day of the next succeeding court, shall be entered by the clerk as the judgments of that day } 308
—(1796) } 499
60. Such judgments shall be final in all actions of debt founded on any writing ascertaining the demand, unless the plaintiff chooses to have a jury, } 308
—(1796) } 499
61. In all other cases, the damages shall be assessed by a jury, (1796) } 499
62. Before every court the clerk shall enter in a particular docket all cases which stand on an issue of fact or law, special verdict or case agreed, in the order they stand in the proceedings, } 309
—(1796) } 499
63. He shall set as near as may be, an equal number to each day, (1796) } 499
64. Jurors knowing any thing of the point in issue, shall disclose the same in open court, (1796) } 309
} 500
65. A juror guilty of a contempt, may be fined in any sum not exceeding 10 pounds, and imprisoned any time not exceeding 24 hours, (1796) } 309
} 500
66. Interpreters may be sworn truly to interpret, (1796) } 310
} 500
67. Any person desirous of suffering a non-suit, shall do it before the jury retire from the bar, (1796) } 310
} 500
68. More than two new trials shall not be granted to the same party in any cause, (1796) } 310
} 500
69. A party praying a continuance shall pay the costs of it, } 310
70. If on an issue concerning several things in one count in detainue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred as to the things omitted, } 310
—(1796) } 500
71. Where there are several counts, one faulty, and entire damages, the verdict shall be good, but the court shall instruct the jury to disregard such faulty count, (1796) } 310
} 500
72. A confession of judgment shall be equal to a release of errors, (1796) } 311
} 500
73. Papers read in evidence though not under seal, may be carried from the bar by the jury, (1796) } 309
} 500
74. No sheriff shall converse with the jury but by order of the court, (1796,) } 309
} 500
75. Juries *de medietate lingue* may be directed to be summoned, (1796) } 309
} 500
76. In all judgments for either plaintiff or defendant, the clerk shall cause a lawyer's fee to be taxed in the bill of costs, } 311
[For further particulars relative to juries and jurors, see Criminal Proceedings, sections 87, &c.] Session of 1796.
77. In actions of assault, battery and slander, if the jury find less than 40 shillings, no more costs than damages shall be recovered, } 488
78. In actions of trespasss and all other personal actions, where the court shall not be satisfied, and enter on the record that the title of the land might have been in question, or that the trespass was wilful or malicious, and the verdict is under 40 shillings, no more costs than damages shall be recovered, } 489
79. If more costs are awarded, the judgment shall be void and shall be amended upon motion at any time by the court, who awarded the same, } 489
80. The party injured, shall be redressed as to costs so wrongfully awarded in case the same be levied upon him, } 489
81. Where several persons shall be made defendants in actions of trespasss, assault, false imprisonment, and one or more shall be acquitted by the verdict, the acquittal shall entitle to costs, as if the verdict had been wholly against the plaintiff, } 489
82. But if it shall seem to the court that there was reasonable cause for making such party defendant, they may order it otherwise, } 489
83. In all cases where judgment shall be given for the defendant, he shall recover his costs against the plaintiff and have execution therefor, } 489
84. The law of costs as to executors and administrators shall remain as heretofore, } 489
85. In actions of trespasss *quare clausum fregit*, the defendant may plead that the trespass was involuntary or negligent, a disclaimer and tender of amends, } 489
86. On some or all of these facts, the plaintiff shall take issue, and if it be found against him, he shall be non-suit and barred, } 489
87. The death of the plaintiff between interlocutory and final judgment, shall not abate a suit originally maintainable by executors or administrators, } 489
88. The death of the defendant between

- interlocutory and final judgment, shall not abate a suit originally maintainable by executors or administrators, 490
89. Such suits may in both cases be revived by *scire facias*, 490
90. If where there are two or more plaintiffs or defendants, one of them should die, the suit shall proceed for or against the survivor, if the cause of action can survive, 490
91. In all actions, real, personal and mixed, if the party shall die between verdict and judgment, such death shall not be pleaded in abatement, but judgment entered as if both parties were living, 490
92. In all actions on bonds or any penal sum for non-performance of covenant or agreement, the plaintiff may assign as many breaches as he shall think fit, 490
93. The jury on the trial of such action shall assess damages for such breaches, as shall be proven, and on such verdict such judgment shall be rendered as has hitherto been usual, 490
94. Where judgment shall be given for the plaintiff on demurrer, *nisi dicat*, or by confession, he may assign as many breaches as he shall think fit, 491
95. A jury shall be summoned to enquire of the truth of every one of those breaches, and the damage the plaintiff shall have sustained thereby, 491
96. Judgment shall be entered for the penalty, to be discharged by the damages assessed by the jury, 491
97. Where the plaintiff shall recover on a bond for the payment of money, judgment shall be entered for the penalty, to be discharged by the payment of principal, interests and costs of suit, 491
98. If before judgment he shall bring into court the principal and interest, judgment shall be entered for the costs only, 491
99. In actions of debt on bond, single bill or debt, on *scire facias* or judgment, the defendant may plead payment in bar, 491
100. All powers of attorney for confessing or suffering judgment to pass by default or otherwise void, 491
101. Any attorney appearing under such power, shall forfeit 50 pounds to the defendant, and damages to the party grieved, 491
102. All general releases of error before action brought, void, 491
103. Non-residents bringing suits, shall previously give bond with security in the clerk's office, the security to be a resident of this state, 491
104. Such bond to be conditioned for the payment of all costs which may accrue to the opposite party or the officers of the court, 491
105. May be put in suit by any persons entitled to costs, as they may respectively become due, 491
106. The process in all real actions, shall be the same, and have the same effect as in England, except that the returns shall be according to the laws of this state, 492
107. All views and vouchers taken away, and after one imparlance, unless the tenant shall plead non-tenure, joint tenancy, and several tenancy in abatement, he shall put himself on the grand assize, and the wife shall be joined on the mere right, 492
108. It shall be tried at the next court, by sixteen jurors, to be summoned and sworn as in other actions, 492
109. The same proceedings shall be had where a plea in abatement has been overruled, 492
110. No excuse for the default of the tenant shall be admitted, except non-summmons, 492
111. Such excuse being allowed, he may imparle until next court, and shall then put himself on the grand assize, 492
112. In personal actions where bail is not demanded, the sheriff may take the engagement of an attorney to appear for the defendant, 492
113. The attorney failing, shall forfeit to the defendant 50 shillings, for which judgment shall be entered, and execution issue, 492
114. In actions of trespass, assault and battery, trover and case, bail may be ordered by a judge, on proper affidavit made, 493
115. On writs of *scire facias* for the renewal of judgments, no judgment shall be rendered on the return of two *nobils* unless the defendant reside in the district or county, as the case may be, or unless he be absent from the commonwealth, and have no known agent within the same, 497
116. Such *scire facias* may be directed to any sheriff in the commonwealth, where the defendant or his attorney resides or may be found, 497

117. No judgment after the verdict of twelve men, shall be staid or reversed for any defect or fault in any writ, original or judicial, 499
118. Nor for any variance in the writ from the declaration or other proceedings, 499
119. Nor for any mispleading, insufficient pleading, discontinuance, misjoining of the issue or lack of warrant of attorney, 499
120. Nor for the appearance of an infant by attorney, if the verdict be not against him, 499
121. Nor for not alledging letters testamentary, or of administration to be brought into court, 499
122. Nor for omitting the words force of arms, or against the peace, 499
123. Nor for a mistake of the christian or surname of either party, 499
124. Nor for a mistake of the sum, quantity of merchandize, day, month or year, 499
125. The name in the one case and the sum quantity or time in the other, being right in any part of the record or proceedings, 499
126. Nor for an omission of the averment, this he is ready to verify, or this he is ready to verify by the record, 499
127. Nor for not alledging as appeareth by the record, or not alledging the action to be within the jurisdiction of the court, 499
128. Nor for any informality in entering the judgment by the clerk, 499
129. Nor shall judgment by *nihil dicit*, nor *sum informatus*, or on writ of enquiry be reversed for what would not reverse a judgment on verdict, 499
130. When demurrer is joined, no defect not specially assigned as cause of demurrer, shall be noticed, 499
131. Unless something so essential to the cause or defence that judgment according to right, cannot be given without it is omitted, 500
132. Private acts of assembly may be given in evidence without pleading them specially, 500
133. After issue joined in ejectment on the title only, no exception of form or substance shall be taken to the declaration, 500
134. A scroll shall operate as a seal, 500
135. If in detinue, the verdict shall omit price or value, a writ of enquiry may be at any time awarded, 500
136. The laws of costs shall not be interpreted as penal laws, 500
- CONSTITUTIONAL PRIVILEGES.**
1. No court or judge shall fine for a contempt higher than 10 pounds, nor imprison longer than one day, without the intervention of a jury, 198
2. No justice of the peace shall for a contempt, fine higher than 20 shillings nor imprison longer than six hours, 199
3. In trials by jury under this act, the truth of the matter may be given in evidence on the general issue, 199
- CONSTABLES.**
November session, 1792.
- For their appointment, see County Courts No 24.
1. Act concerning, 145
The provisions of this act have been superseded by an act of 1798, Vol. II. Chap. 10—and an act of 1803, Vol. III. Chap. 101.
- Session, 1793.*
2. Any constable receiving from a justice any blank summons, and filling up the same, liable to a fine of 5 pounds, recoverable on motion or information in the quarter-session court, for the benefit of the party aggrieved, and to removal from office, 218
- Session, 1795.*
3. All constables shall give information to some justice of the peace, of all vagrants found in their respective counties, 261
- CONVEYANCES.**
1. Act for regulating, 565
2. Conveyance, what sufficient to pass an estate of inheritance, 567
3. Covenant in consideration of marriage when good against creditors, 568
4. Conveyances by non-residents how to be recorded, 568
5. By husband and wife, how to be recorded, 568
6. Commissioners to take privy examination of wife if in United States, 569
7. If out of the U. States, 569
8. Conveyances of land lying in another county, 569
9. Clerk's fees, 570
10. Conveyances of land by persons residing in another state, 570
11. Powers of attorney how to be acknowledged and recorded, 570
12. How *feme covert* may relinquish her dower, 571
13. Clerk's fees, 571

14. Duty of clerk in recording writings 571
 15. Estates tail changed into estates in fee-simple, 571
 16. Construction of grants, devises &c. 571
 17. Contingent, remainder good without estate to support it, 572
 18. In deeds of bargain and sale, possession to be deemed to be transferred to the bargainee, 572
 19. Lands held in trust, liable to the debts of him to whose use they are holden, 573
 20. And to dower and curtesy, 573
 21. Attornment not necessary, 573
 22. To a stranger void, 573
 See *Division of Lands*.
- CORONERS.**
 Act concerning, 167
- COSTS.**
 In Civil Cases—see Civil proceedings, No. 77 to 87.
 —Chancery—See chancery, Nos. 1 and 12.
 —Prosecutions—See criminal proceedings, Nos. 54, 61 & 71.
 —The court of appeals—See court of appeals, No. 28.
- COVENANTS.**
 See Civil Proceedings, No. 92, and Assignments No. 4.
- COUNTY COURTS.**
June session, 1792.
1. Justices to be appointed in every county, and their number, (1796) 90 } 374
 2. To take the oath required by the constitution, under the penalty of 50 pounds, (1796) 91 } 374
 3. The oath may be administered by one justice to another, and shall be recorded in the county court (1796) 91 } 374
 4. Justices to be conservators of the peace, within their respective counties, (1796) 91 } 376
 5. To have cognizance of all matters of less value than 5 pounds or 1000 lbs. of tobacco, (1796) 91 } 376
 6. May give judgment and award execution against the goods and chattels of the debtor, *but not against his body* —(altered in 1796, page 376) 91
 7. Such executions may be executed and returned by the sheriff or constable to whom directed, 91
 8. All judgments given by a justice, when the amount thereof shall not exceed 50 shillings or 500 lbs. of tobacco shall be final, (25 shillings by an act of next session) 91
 9. In all judgments where the amount shall exceed that sum, there may be an appeal to the next court of quarter sessions, (county court by an act of next session) 91
 10. Upon an appeal, the justice or justices who gave the judgment shall suspend the proceedings and return the papers and the judgment to the clerk's office of said court, (1796) 92 } 377
 11. The court shall at their next session, hear and determine the same in a summary way, without pleading in writing, (1796) 92 } 377
 12. It may be continued till the next court, but on no pretence beyond it, (1796) 92 } 377
 13. The party appealing, shall receive from the justice, a copy of the judgment and produce it to the clerk —(1796) 92 } 377
 24. Shall enter into bond in the clerk's office, in a penalty double the sum of said judgment with a security (1796) 92 } 377
 15. The security in such bond must be an inhabitant of the county, and must make oath that he is so, that he possesses visible personal estate of the value of the penalty of the bond,
 16. Such bond shall be conditioned for the payment of the debt and costs on the affirmance of the judgment appealed from, (1796) 92 } 377
 17. After the bond is executed, the clerk shall certify it to the magistrate and constable, and enjoin further proceedings, and issue a summons for the appellee, (1796) 92 } 377
 18. The constable shall summon the appellee, his agent or attorney, if within the county, ten days before the next court, (1796) 92 } 377
 19. The justice who gave the judgment, shall certify the papers read on the trial, and if none were read, shall certify that there were none, —(1796) 92 } 378
 20. The court shall decide it in a summary way, and give such judgment as they think right, both as to debt and costs, (1796) 92 } 377
 21. On such judgment, execution may issue from the office of quarter session court, p. 92—[county court 1796] 377.
 22. County courts shall have cognizance of all matters which they had under the laws of Virginia, except such matters as are expressly made

- cognizable in the court of quarter-
sessions, [1793] { 93
202
23. Such proceedings shall be had as
in said courts are directed by law, { 93
24. County courts shall lay off their
counties into districts, and appoint a
constable in each, { 161
25. A monthly court shall be held by
the justices of the peace, at the times
and places appointed by law, and at { 93
no other time or place, [1796] { 374
26. It shall be called the county court,
and three justices shall be sufficient
to determine the causes depending { 93
therein, [1796] { 374
27. They may adjourn from day to day
—they shall hold no court in the
months in which quarter-session
courts are directed to be held { 93
—[1796] { 374
28. An appeal from a single justice
shall be to the county court (and
not to the quarter-session court { 157
—[1796] { 377
29. The proceedings on such appeal
shall be such as was directed in the act
giving it to the quarter-session court { 157
30. The party appealing, shall give
bond with security to be approved of { 157
by the magistrate, { 377
31. An appeal may be taken where-
ever the judgment exceeds 25 shil-
lings, { 157
{ 377
32. County court justice may summons
witnesses from other counties, { 157
—[1796] { 378
33. Such witnesses shall be allowed 2 pence
per mile, and his ferriages, to be { 157
taxed in the bill of costs, [1796] { 378
34. The county courts or any justice
may punish contempts in the same
manner as the quarter session courts { 158
may, [1796] { 378
35. The county courts shall appoint
overseers of the poor in every county,
[repealed in 1793] { 167
- Session, 1793.*
36. All appeals from a single magis-
trate, shall be to the next county
court, provided there be ten days be-
tween rendering the judgment and { 201
such court, [1796] { 377
37. In all such appeals, the parties
shall have the benefit of all legal
testimony which can be produced { 202
—[1796] { 378
38. Where the appellee resides in ano-
ther county, the appellant may exe-
cute the process, [1796] { 202
{ 377
39. Satisfactory proof must be
made to the court that such process
has been served, [1796] { 202
{ 378
40. If such process shall not be execu-
ted before the second court, the judg-
ment of the magistrate shall stand { 202
confirmed, [1796] { 378
41. County court justices shall have
cognizance of all matters relating to
bastardy according to the laws of
Virginia, { 202
42. Shall take bonds and security of the
sheriffs and collectors of the revenue, { 202
43. Shall call on present and former
sheriffs for a settlement of their ac-
counts, { 202
44. May appoint two of their own bo-
dy to make such settlement, and re-
port the same to the court, { 202
45. Shall give judgment and award exe-
cution for all arrears due to the coun-
ty on such settlement against the she-
riff or collector, securities and their
executors, administrators or legal re-
presentatives, { 202
46. Ten days notice shall be given of
the award of such judgment, { 202
47. The justices appointed to settle
with the sheriff or collector, shall give
notice of the time and place appoint-
ed for settlement, { 202
48. The sheriff or collector failing to
attend, shall forfeit 30 pounds, reco-
verable by debt or information in the
quarter-session court to the use of { 202
the county, [1796] { 592
49. The justices making the settle-
ment, shall be allowed 4 shillings per
day, to be paid by the county, { 202
50. The several laws heretofore in force
concerning the poor, repealed, { 191
51. The county courts in laying the
levy shall provide for the relief of { 192
the poor, [1796] { 375
52. Shall make orders on the sheriffs
or collectors to pay such sums as they
shall allow, { 192
53. The justices shall give information
to the county courts of poor orphans
and other children whose parents are
unable to bring them up in honest
courses, { 192
54. Such poor children may be bound
apprentices by order of the court, { 192
[1797] { 677

55. But they shall first summon the next of kin or other person with whom they live to shew cause, 192
56. The apprenticeship of a boy shall be till 21, of a girl till 16 years of age { 192
—[1797] } 677
57. The indenture shall contain covenants obliging the master to teach them some trade or business, also reading and writing, and if a boy, common arithmetic, [1797] { 192
} 677
58. And to pay them three pounds, ten shillings and a new suit of clothes, { 192
—[1797] } 677
59. Such indenture shall be approved by the court, and recorded in it, { 192
—[1797] } 677
- Session, 1796.
60. County courts shall have jurisdiction of all causes respecting wills, letters of administration, guardians, and admitting deeds and other writings to record, 374-5
61. They shall superintend public inspections, ordinaries, and appoint processioners, 375
62. They shall hear and determine the complaints of masters, apprentices & servants, establish and regulate ferries and provide for the poor 375
63. They shall cause to be erected, & forever keep in repair a court house, jail, whipping-post and stocks, 375
64. Where land has not been appropriated for that purpose, they may purchase two acres to erect the public buildings on for the use of their county, and for no other use whatever, 375
65. The fee simple of the public ground in each county shall be vested in the county court, 375
66. Every member of the court, failing to keep and maintain a good and sufficient prison pillory and stocks, shall pay 500 lbs. of tobacco, one moiety to the informer, the other to the commonwealth, recoverable in any court or record, 375
67. They shall also be liable to the sheriff in the district court for all damages recovered against him for escapes for want of a sufficient prison, 375
68. The district court to apportion the recovery among the several justices, and one or more executions may issue on the judgment, 376
69. They may lay out prison bounds, which shall be recorded and renewed from time to time, 376
70. Any person not committed for treason or felony, may be admitted to the prison bounds, and keeping constantly within them, shall be adjudged a true prisoner, 376
71. The county courts, when necessary, may cause a ducking stool to be erected at such place as they shall deem proper, 376
72. They shall sit on the same days, (in all other months) in which the quarter session courts are directed to be held, 508
- COURTS OF QUARTER SESSIONS.**
June session, 1792.
1. Quarter session courts to be established in each county, [1796] { 94
} 502
2. To consist of three justices appointed out of the justices of the peace for the county [or other fit person, 1795, P. 353]—[1796] { 94
} 502
3. They shall be conservators of the peace within their respective counties, [1796] { 94
} 504
4. Shall hold four courts annually, and any two of them shall constitute a court, [1796] { 94
} 502
5. Shall have a general jurisdiction at common law and in chancery within their respective counties, [1796] { 94
} 504
6. Shall sit six judicial days, if necessary, and shall have power to award writs of ne exeat, injunction and habeas corpus, for two justices out of court, by Nov. 1792, and the act of 1796] { 94
} 504
7. Shall have cognizance of all matters relating to escheat and forfeitures within their counties, [1796] { 95
} 504
8. Any justice thereof or justice of the peace may take recognizance of special bail in any cause depending therein, [1796] { 95
} 504
9. Grand juries shall be summoned, impanelled and charged as heretofore in the county courts, 95
10. Shall be governed by the same laws which regulated proceedings in the supreme court for the district of Kentucky and the county courts, 95
11. Shall be attended by the same officers that those courts were attended by, 95
12. Such officers shall receive the same fees as were allowed for the same services in the county courts, 95
13. Quarter session courts shall be courts of record and may punish contempts by fine and imprisonment, 95
14. The quarter session justices shall re-

- ceive 12s. per day on a warrant from the auditor bottomed on a certificate from the clerk, (1796) } 98
 15. Every quarter session justice shall cease to be a justice of the county court, } 507
 16. Quarter session courts shall not have jurisdiction in criminal cases affecting life or limb, nor in causes of less value than 5l. [1796] } 94
 17. Shall have jurisdiction over causes depending in the supreme court, } 504
 18. Their judgments and decrees shall be final, except where by law controllable by the court of appeals, } 95
 19. The quarter session justices shall not have cognizance out of court, except of crimes and misdemeanors [and that two of them may award writs of *ne exeat*, *injunction*, *habeas corpus*, } 157-8
 1796] and *audita querela*, } 504
 20. The court of quarter sessions shall be a court of oyer and terminer for the trial of slaves, (1796) } 157
 21. Shall have concurrent jurisdiction with the court of appeals in the trial of *caveats*, } 507
Session of 1793.
 22. Where the justices or any of them in a quarter session court are interested in any suit or motion therein, the place shall be supplied by a disinterested county court justice, } 159
 23. Such justice to be notified by the sheriff, and receive the same wages as a quarter session justice, } 203
 24. A subpoena in chancery may issue from the quarter session office to the sheriff of any county in the state against any defendant residing in his bailiwick, [1796] } 203
 25. If the quarter session court shall refuse to sign a bill of exceptions when presented, seals shall be affixed, and it shall be certified and signed in their presence by three persons, } 506
 26. Such persons shall certify that the bill was presented to them and that they refused to sign it, } 203
 27. When so signed and certified it shall have the same force as if signed and sealed by the court, } 203
 28. The court may nevertheless be permitted to assign their reasons for refusing to sign such bill, } 203
 29. In an action of debt in the quarter session court set-offs shall be allowed, [amplified in 1796] } 204
 30. Such discounts may be plead or given in evidence on the general issue, } 204
 31. Notice shall be given of such discount at the time of putting in the plea, } 204
 32. No discounts shall be given in evidence except those of which notice was given, } 204
 33. The jury may bring in a verdict for what shall appear due to either plaintiff or defendant, and judgment shall be entered accordingly, [1796] } 204
 34. Non-resident bringing suit shall file in the clerk's office bond with security for costs which may accrue to the opposite party or officers of the court, [1796] } 205
 35. Such bond may be put in suit by the opposite party or any of the officers, [1796] } 491
 36. The court of quarter sessions shall have concurrent jurisdiction with the court of appeals in all cases respecting perpetuating testimony, } 205
 37. If but one justice attends on the first day he may adjourn the court for three days, } 205
 38. The wages of the justices shall become due on the first [10th by act of 1796] day of June and November annually, } 205
 39. The clerk of said court shall not receive or demand any tax on judgments, } 205
Session of 1795.
 40. When a vacancy shall happen in the court of quarter-sessions, the governor may appoint a fit person residing in the county, although he be not a justice of the peace, } 353
 41. When joint or joint and several obligors reside in different counties, the clerk where the suit is brought, may issue writs to any counties where the other obligors reside, [1796] } 353
 42. The court of quarter-sessions shall have concurrent jurisdiction with the district courts, except in the trial of criminals, [1796] } 504
 43. Deeds may be recorded in the office of the clerk of the quarter session court, (1796) } 568
 44. Grand juries in the quarter-session courts shall present all offences against the penal laws, although the penalty exceeds five pounds, } 504
 45. The jurors shall not be liable to costs on any presentment by them made, } 504
 46. No oath of secrecy shall be required of the grand jury; but no grand

- juror shall be obliged to present himself or fellow jurors, 504
47. The court may hear and determine in a summary way such presentments, when the penalty does not exceed 15 dollars, 505
48. Where the penalty exceeds that sum or is uncertain, it shall be assessed by a jury, 505
49. In either case, the court shall enter judgment and award execution according to law, 505
50. No presentment of a grand jury shall be quashed for want of qualification in any of the jurors, provided a sufficient number to constitute a jury be duly qualified, 505
51. All original and subsequent process in law or equity, shall be made returnable to the first day of the term, and shall be executed three days before the return day, except for treason, felony, piracy, riot, or breach of the peace, 505
52. No bail shall be demanded of the resile of one county sued in another until *capias* has been returned *non est inventus* in his own county, 506
53. Every writ issued in such case without an indorsement of no bail required, shall be voidable at any time before issue joined or judgment by default, but not afterwards, 506
54. Bail may be required on such writ when it issues to the county where the cause of action accrued, 506
55. Set-offs may be plead or given in evidence in any suit in the quarter session court for any debt or demand, 506
56. In such case a verdict may be brought in for what is due either to plaintiff or defendant, and judgment entered accordingly, 506
57. Office judgments set aside shall be immediately put to the end of the issue docket and tried the same court in turn with other issues, unless the plaintiff shall waive his right of trial until next term, 507
58. The clerk shall proportion the causes on the docket and summons witnesses to attend accordingly, 507
59. No cause shall be removed from its place on the docket, unless the plaintiff at the calling is unprepared for trial, 507
60. In such case and in no other it shall be put to the end of the docket, 507
61. The clerk shall preserve and file all papers in every cause, and in land cases the pleadings shall be entered at large with the judgment in particular books to be kept for that purpose, 507
62. The minutes of each day shall be read, corrected and signed by the presiding judge, 507

COURTS, DISTRICT.

Session of 1795.

1. District courts established and made courts of record, 300
2. To have jurisdiction over all matters at common law and in chancery, arising within their districts, 302
3. Except actions of assault, battery and slander, and cases under 501. (*trespass*, 1796) 302
4. Shall hear and determine motions against sheriffs and other officers, against attornies at law, for securities against their principals, and against each other, 302
5. Shall hear and determine all crimes and misdemeanors committed within the district, except breaches of the penal laws, (1796) 302
6. All legal process shall be issued by the clerk, bear teste in his name, and be returnable to the third day of the next term, except subpoenas for witnesses, 302
7. When persons are bound jointly or jointly and severally in a bond, they may be prosecuted in any district where either of them resides, 302
8. Where oyer is craved in one district of a bond filed in another, a copy shall be admitted, 302
9. But on plea of *non est factum*, the clerk shall attend with the original paper, 303
10. Office judgments not set aside on the third day to be entered as judgments of that day, 304
11. Costs of continuance to be paid by the party praying it, 310
12. Whenever a suit is finally determined, the clerk shall make a complete record of it, 311
13. Those in which the titles of land are determined, shall be kept in a separate book, 311
14. In all judgments for plaintiff or defendant, the clerk shall cause a lawyer's fee to be taxed in the bill of costs, 311
15. Process having the effect of appeal to lie from judgments of the supreme

- court for the district of Kentucky, to the district courts, 312
16. A public jailor shall be appointed to each district by the governor, and shall give bond and security to the governor and successors, 317
17. The district courts shall superintend the jails, 317
18. Shall lay out prison rules and bounds—shall appoint persons to prosecute for the commonwealth, where the attorney-general cannot attend, 319
19. All deeds and other writings may be recorded in the district court office, provided that in case of deeds for land it lies within the district, 319
20. Clerks of district courts may receive the acknowledgment of deeds out of court, 319
21. The plaintiff on a non-suit, to pay the defendant 45¢. besides costs, 307
22. A *restitutio capias* may be sued out where the defendant has removed into another county, 306
23. The fees to be taxed for attorneys at law shall be the same in the district courts in suits at common law, as in the quarter-session courts, and in suits in chancery, the same as are allowed in the court of appeals, 336
- See *Civil Proceedings, Criminal Proceedings, Chancery, Absent Defendants and Witnesses.*
- Session of 1796.
24. The judges of the district court to hold two annual sessions at Frankfort, at which not less than three judges shall constitute a court, 478
25. Shall appoint a clerk, and shall have jurisdiction of all causes, suits and motions, against all public debtors, sheriffs, clerks of superior and inferior courts, and all public debtors for and in behalf of the commonwealth, 478
26. The district courts or one judge in vacation may award injunctions, writs of *certiorari*, *ne exeat* and *habeas corpus*, 478
27. Shall have no jurisdiction of *caveat mandamus* or *certiorari*, unless the land in one case and the record in the other lies within the district, 478
28. Any district court may adjourn questions of law new and difficult, to the general court, but no costs shall accrue on the adjournment, 479
29. Writs of *habeas corpus* may issue without seal, 479
30. District courts shall have no appellate jurisdiction whatever, 479
31. Cases standing on an order for rehearing in the court of appeals, removed to the district courts, shall be examined in the district court only, as it would have been in the court of appeals, 479
32. The district courts shall determine causes removed thither from the court of appeals, as if they had originated there, 479
33. Where for want of a sufficient jail in any county guards shall be necessary, the allowance therefor shall be certified to the county court, and levied on the county, 480
34. But the expence of guards in all other cases shall be paid out of the treasury, 481
35. When the judges of the district court shall receive the county jail as sufficient for the district and so enter it on their records, the county shall no longer be chargeable for guards, 480
36. The judges of the district courts & the judges at the general meetings, shall make such allowance to their respective clerks as they may think reasonable, for procuring paper, books, and a press for the use of their offices, 481
- COURTS OF OYER & TERMINER.**
[The acts respecting this court and its proceedings are worthy of attention on several accounts, but no detail is deemed necessary. It was established in 1792, page 98, and repealed in 1795, page 321 of this volume.]
- COURT OF APPEALS.**
June, 1792.
1. Court of appeals to consist of three judges, one to be called chief justice of Kentucky, and the other two first and second judge of the court of appeals, [1796] 102 } 560
2. Every person so commissioned to take an oath of office, which shall be recorded in the court of appeals, [1796] 102 } 560
3. The court shall be held twice [three times, 1796] every year in the place [Frankfort, 1796] appointed by the general assembly. The court, or the judges in vacation, may appoint a clerk, (1796) 103 } 560
4. The clerk shall take the oath prescribed by the constitution, and give bond to the governor in reasonable penalty with one security at least, [1796] 103 } 561
5. Such bond shall be conditioned for the faithful discharge of the duties of

- his office, shall be recorded in the court of appeals and not be void on the first recovery, (1796) § 103
 561
6. The clerk's office shall be annually inspected by one of the judges, (1796) § 103
 561
7. The sheriff of the county where the court sits, and his deputies, shall attend it, (1796) § 103
 561
8. The compensation to the clerk, sheriff, attorneys at law and witnesses, to be the same as in the supreme court of Kentucky, § 103
9. For other services a compensation shall be made by the parties, to be determined by the court, § 104
10. Where the sheriff or his deputy is interested the court may appoint a disinterested person to perform the duties, (1796) § 104
 561
11. On all judgment and decrees in the court of appeals, the same costs shall be taxed as in the supreme court, § 104
12. Non-attendance of the judges shall not work a discontinuance of process, (1796) § 104
 561
13. If a majority shall not attend at the commencement, the court may be adjourned for three days successively, (1796) § 104
 561
14. Executions to be issued from the court of appeals shall be the same as those issued from the supreme court. The return days shall be appointed by the court, § 104
 562
15. The court shall have power to direct the writs, summonses, &c. and modes of proceeding, (1796) § 104
 562
16. Shall have power to issue writs of *mandamus* and *certiorari*, § 104
17. Shall have original and final jurisdiction according to the constitution, § 105
18. Shall have appellate jurisdiction on judgments and decrees of the supreme court and quarter session courts, (1796) § 105
 562
19. Shall have jurisdiction by *certiorari* in cases depending in inferior courts over which by the constitution it has original and final jurisdiction, § 105
20. An appeal shall not be granted unless on final judgment or decree for 20¢. [30¢. 1796] exclusive of costs, or relating to franchise or freehold, § 106
 562
21. Person appealing shall by himself or other execute bond in the office of the court of quarter sessions in a reasonable sum in the discretion of the court, (1796) § 106
 562
22. Such bond shall be executed within a time fixed by the court whose judgment is appealed from, and with security approved by them, and conditioned for the due prosecution of his appeal, (1796) § 106
 563
23. Every appeal shall be prayed at the time of rendering the judgment, sentence or decree, and the appellant shall lodge an authenticated copy of the record before the expiration of the second term after the appeal prayed, (1796) § 106
 563
24. If he fails to do this, his appeal shall be dismissed, unless further time is granted at the second term, (1796) § 106
 563
25. Except in cases of wills, mills and roads, the plaintiff shall assign as errors matters of law only, arising on the face of the proceeding, (1796) § 106
 563
26. But this shall not apply to writs of error *coram vobis*, § 106
27. If judgment be affirmed in whole, the appellant shall pay the appellee 10 per cent besides the costs of the original suit and appeal, (1796) § 106
 563
28. If the judgment or decree be reversed in whole, the appellee shall pay such costs as the court in their discretion shall award, (1796) § 106
 563
29. In case of a partial reversal the court of appeals shall give such judgment as the court of quarter sessions [inferior court, 1796] ought to have given, § 106
 563
30. On appeals and writs of error the court of appeals may issue execution or remit the cause to the court of quarter sessions for execution to issue, (1796) § 107
 563
31. Writs of error shall be issued as matter of right, except in cases determined by the court of oyer and terminer, § 107
 563
32. Not to operate as a *superseas* without the order of court, or of a judge in vacation, (1796) § 107
 563
33. Such order not to be made unless the court or judge thinks there is error sufficient to reverse the judgment in whole or part, (1796) § 107
 563 4
34. It shall not operate as a *superseas* until bond shall be given with security, to be approved by the clerk, conditioned as in cases of appeal, (1796) § 107
 564
35. An authenticated copy of the record must be lodged as in cases of appeal, (1796) § 107
 564
36. A writ of error shall not lie after the

- expiration of five years after the rendition of judgment, (1796) { 107
564
37. When the court of appeals are divided in opinion, the judgment of the inferior court shall be affirmed, { 107
—(1796) { 564
38. The clerk shall carefully preserve the transcripts of records, &c. and docket them in the order he shall receive them, but the court for good cause shewn may order a cause to be heard out of its turn, (1796) { 107-8
564
39. The proceedings of each day shall be drawn up at full length and signed by the presiding judge, (1796) { 108
564
40. When a cause shall be finally decided, the clerk shall make up a complete record of it, (1796) { 108
564
41. All writs shall be signed by him and bear teste in the name of the chief justice for the time being, { 108
—(1796) { 564-5
42. Witnesses shall be subject to the same laws and have same privileges as in the supreme court, 108
43. Jurors likewise to be summoned in the same manner and liable to like fines and penalties, 108
44. The court may administer oaths, punish contempts and establish rules in conformity with the constitution and laws, (1796) { 108
565
45. The court may award commissions for taking the depositions of witnesses *de bene esse*, (1796) { 108
565
46. The papers and lawyers of the supreme court of Kentucky shall be transmitted to the court of appeals, 109
47. In the court of appeals the parties may plead and manage their causes personally or by attorney in fact or in law, (1796) { 109
565
48. The court may direct orders of survey to any person nominated by the parties, 109
49. In surveys so made no more shall be taxed in the bill of costs as surveyor's fees than the parties have agreed to give, 109
50. Appeals and writs of error from the county courts to the supreme court to be removed to the court of appeals, 109
51. Court of appeals to hold an additional session, 117
- Session of 1795.*
52. The original jurisdiction of the court of appeals taken away, 299
53. Appeals and writs of error shall be from the district court to the court of appeals in the same manner as from the quarter session court, 316
54. Where lands conveyed by one deed lie part in one district and part in another the deed may be acknowledged in the office of the court of appeals, 320
55. The clerk of the court of appeals in such cases may receive the acknowledgment out of court, { 320
—(1796) { 565
- Session of 1796.*
56. Executions shall issue according to law, and the return days be appointed by the court, 562
57. The sheriff and his deputies shall attend the court of appeals and perform the duties of sheriff, tipstaff and crier, 561
- For the remainder of the law on this subject see volume II, chapters 155, 210, 302, 358, and vol. III, chapters 81, 185, 370, 484, 487 and 500.
- CRIMINAL PROCEEDINGS.**
- November, 1792.*
1. Every justice of the peace may issue his warrant to apprehend any person charged with a criminal offence which in his opinion ought to be tried by the court of quarter sessions, 158
2. Shall have power to examine and commit the prisoner, take recognizance of witnesses and summon the quarter session justices, 158
- [*The provisions of the oyer and terminer act of 1792, and of the district court law of 1795, have been either repealed or superseded by subsequent acts, except in a very few instances, which will be noticed; it will however not be amiss to read them over.*]
- COURT OF ENQUIRY AND PROCEEDINGS THEREIN.**
- [*These proceedings were changed by the circuit court law of 1802, and now controlled by an act of 1808.*
- Session of 1796.*
3. When a person is charged before a justice of the peace with a criminal offence which he thinks ought to be examined by the quarter session court, he shall recognize the witnesses, commit the prisoner and summons the quarter session justices, 406
4. Such summons shall require their attendance at the court house not less than five nor more than ten days after the date, 466
5. The quarter session justices (or two of them) being convened shall consider whether the prisoner ought to be

- discharged, tried in the quarter session or a superior court, 466
6. If in the quarter session court he shall be bailed to appear at the next term or remanded to prison in default of bail, 466
7. If in a superior court, they shall take the depositions of all material witnesses, and bind by recognizance all they shall think proper to appear at the trial, 466
8. They shall remand the prisoner to jail, and any two justices may by warrant under their hands and seals direct the sheriff to remove him to the jail of the superior court, 466
9. For enabling the sheriff to execute this warrant, the justices may empower him to impress as many men, horses and boats as may be necessary, 467
[The horses and boats to be previously valued by two disinterested men, June 1792.] 97
10. If the [quarter session] court shall think the prisoner bailable, they shall enter that opinion on the record and the sum in which he is to be bound, and he may be admitted to bail before any justice of the peace of the county, or one judge of the superior court, 467
11. If they think him not bailable, yet any two judges of the superior court may admit him to bail, 467
12. Witnesses shall be summoned in behalf of the prisoner to the examining court if he require it, 467
13. The clerk shall forthwith transmit to the attorney of the commonwealth for such superior court, a copy of the warrant and depositions, 467
14. He shall issue a *venire facias* for summoning a jury or house-keepers from the county where, and as near as may be the place where the offence was committed, to come before the superior court, 468
15. The sheriff of every county where a superior court of criminal jurisdiction is held, shall before the meeting of every such court summon 24 discreet house-keepers, within or without his county, but within the district, for a grand jury, 468
16. They shall be summoned to the first day of the court, and any 16 of them appearing shall be sworn a grand jury, 468
17. If a sufficient number do not appear on the first day, the sheriff shall summon a tales of by-standing house-keepers, qualified according to law, 468
18. Any person indicted for treason or felony and not already in custody, shall be arrested by *capias*, 468
19. If such *capias* shall be returned *non est inventus*, another shall immediately issue returnable forthwith, in which the sheriff shall be commanded to seize his chattels, 468
20. If he return his body not found and the indictment cometh not, an *exigent* shall be awarded, 468
21. A person indicted of treason or felony, shall be arraigned and tried at the same term, unless the court see good cause for adjourning it to the next, 468
22. The court shall allow him counsel to assist him at his trial if he desire it, 468
23. A prisoner committed for treason or felony, if not tried the first term, may be bailed, 468
24. Provided he petitions for trial on the first day of that term—and, 469
25. Provided it does not appear by affidavit that the witnesses could not be produced at that term, 469
26. If not indicted before or at the second term, he shall be discharged from his imprisonment, unless the appearance of witnesses against him shall have been prevented by himself, 469
27. If not tried at or before the third term after his examination before the justices he shall be forever discharged from the crime, 469
28. The prisoner shall have a copy of the indictment and pannel of jurors, whenever he shall request it, before trial or sentence, 469
29. If the array be challenged, their place shall be supplied by by-standing house-keepers, and so shall the place of as many of the venire as may be challenged, be supplied, 469
30. On inquests for the commonwealth the prosecuting attorney shall assign a cause certain for any challenge which he may make, and the truth of that cause shall be tried by the court, 469
31. In treason, the right to peremptory challenge, is limited to 24, in felony to 20, 469
32. The clerk of the superior court shall issue subpoenas for witnesses for the defendant, at his request, 470
33. Such witness shall have the same allowance and be subject to the same penalties, as witnesses summoned in civil cases, 470
34. When a prisoner for treason or felony

- ny shall stand mute on his arraignment, or persist after admonition, in not pleading to his indictment—peremptorily challenge more jurors than he may, or be outlawed, he shall be considered as convicted, 470
35. The clerk of the superior court shall enter in a book, the names of the *venire* and witnesses, the number of days, ferriages, distance, &c. respectively, 470
36. A certificate of which shall entitle the party to pay at the treasury, 470
37. The sheriff of each county within which an inferior court of criminal jurisdiction is held, shall summon 24 discreet free holders within his county as grand jurors, 470
38. They shall be neither ordinary keepers, surveyors of roads, constables, nor owners of water grist mills, 470
39. They shall be summoned to the first day of such court and 16 of them appearing, shall be sworn, 470
40. If a sufficient number does not attend, a *tales* of by standers shall be summoned, 470-1
41. They shall enquire into and present all breaches of the penal laws, committed within the space of twelve months before the time of presentment, 470
42. In making presentments, they shall comply with the following rules, 471
43. They shall state the crime presented, and the time and place when it was committed, and by whom, 471
44. They shall set down at the foot of the presentment, the name of the informers, and where they reside, whether of the grand jury or not, 471
45. They may present all offences made penal by the laws, although the recovery of the fines be otherwise provided for, and do not amount to 5*l.* 471
46. Where the penalty does not exceed 5*l.* in an inferior court, or 10 in a superior one, no information need be filed, but a summons shall issue stating the presentment, and calling on the defendant to answer it, 471
47. The persons who gave the information shall be summoned to attend as witnesses, 471
48. If the defendant does not appear, judgment shall be ordered against him for the penalty, 471
49. If he do appear, the court shall hear and determine the same in a summary way without a jury, where the penalty is less than 5*l.* 471
50. Where the penalty exceeds 5*l.* or is uncertain, a jury shall be summoned, and on their verdict judgment shall be entered and execution awarded, 472
51. Every grand juror summoned and failing to attend without excuse or good cause, shall be fined not exceeding 2*l.* 471-2
52. Presentments shall not be made in a superior court, where the penalty imposed is less than 5*l.* 472
53. In case of the sickness, death or non-attendance of grand jurors after they are sworn, others may be sworn in their stead, 472
54. The courts of quarter-sessions shall annually certify to the auditor all expenses accruing on the examination, trial, guard and maintenance of criminals for misdemeanors or breaches of the peace and all other charges properly chargeable to the public, with the vouchers on which the claims have been allowed, 472
55. The auditor shall liquidate and adjust the claims and grant warrants therefor on the treasury, 472
56. Execution of death shall not be done in less than 20 days after judgment, 472
57. Where death ensues in one county on poison or a blow given in another, the offender shall be examined in the county where the blow or poison was given, and tried in the court within whose jurisdiction such county lies, 472
58. An accessory to felony shall be examined in the court of the county, and tried within the jurisdiction where he became accessory, 472
59. If a person be arrested for treason or felony committed in a county different from that in which he was arrested, he shall be transmitted by the sheriff, on warrant from a justice of the peace, to some justice of the county where the crime was committed, 472
60. Such justice shall proceed in the same manner as if the defendant had been brought before him in the first instance, 473
61. For removing a criminal from one county to another, the sheriff shall be allowed the same mileage and fees, and have the same power of impressing guards as is allowed in removing one to the jail of a superior court, 473
62. Indictments in which the exigent is awarded, shall have the addition of the estate, degree, mystery and county of the defendant, 472

63. If outlawry be awarded on any indictment in which this is omitted, such outlawry shall be reversed, 473
64. Before outlawry pronounced, the indictment may be abated by the exception of the defendant, 473
65. The words "force and arms," or words expressive of any particular kind of force, shall not be necessary in an indictment, 473
66. No indictment for treason, felony, or any offence, shall be quashed or the judgment thereon arrested or reversed for the omission of the name of any parish, town, ville or hamlet, 473
67. No information for trespass or misdemeanor shall be filed but by express order of the court, entered on record, 473
68. Nor unless the party supposed guilty shall have failed to appear and shew cause to the contrary, having been required so to do by summons, 473
69. Such information shall express the name and surname of the prosecutor, the town or county in which he resides, and his title or profession, 473-4
70. All these shall be written at the foot of every indictment for trespass or misdemeanor before it is presented to the grand jury, 474
71. In indictments & informations for misdemeanors the prosecutor shall pay costs where the indictment is not found, where good cause is shewn against filing the information, and where the prosecuted shall be acquitted on the trial, 474
72. In such cases the defendant may have execution for his costs, as in civil cases, 474
73. The amercement in every information or indictment, shall be assessed by twelve honest and lawful men, 474
74. Such amercement ought to be according to the degree of the fault, and saving to the party convict, his contentment, 474
75. No escheator, sheriff, coroner, or other inquisitor, shall have power of amercement for default of common summoners, save only the judges of the district courts, and courts of quarter sessions, 474
76. A private person having a person arrested as a criminal in his custody, and negligently permitting him to escape before brought to jail, shall be punishable by fine on indictment in the district court, 474
77. Outlawry or attainder of any felony whatever, shall be no cause of forfeiture of dower in lands or personal estate, but the same shall descend as in case of persons dying intestate, 474
78. No attainder shall work corruption of blood, 474
79. Saving to all else except the offender, every right which they had or ought to have before or at the time of attainder, conviction or outlawry, 475
80. Approvers shall never be admitted in any case whatever, 475
81. All prosecutions and actions on penal acts of assembly, not affecting life or limb, shall be exhibited within a year after the offence committed, and not afterwards, 475
82. Special bail shall not be requirable in an action for a breach of a penal law, unless expressly so directed, 475
83. Where a fine is laid on the county court justices, action may be brought against them all jointly, 475
84. In all indictments for offences not capital, the court may compel the prosecutor to give security for costs or dismiss the indictment with costs, 475
85. The sheriff of every county shall on every court day summons a sufficient number of the bystanders qualified according to law, to attend the court that day, out of which juries shall be empannelled, 475
86. If any person so summoned shall fail to attend, he shall be fined 8 dollars, to the use of the commonwealth, 475
87. No person shall be a juror in any case, civil or criminal, in the superior courts, unless he is a house-keeper & possessed of visible estate, real or personal to the amount of 20*l.*, 475-6
88. No person shall be a juror in an inferior court, unless possessed of a visible estate, real or personal, of the value of 10*l.* and of good demeanor, 476
89. No officer shall return a juror not qualified as this act directs, 476
90. All exceptions against a juror as to his estate, shall be taken before he is sworn, 476
91. Juries *de medietate lingue* may be directed by the courts respectively, 476
92. Jurors knowing any thing relative to the point in issue, shall disclose it in open court, 476
93. A juror guilty of a contempt to the court, may be fined not exceeding 10*l.*, 476
94. No sheriff shall converse with a ju-

- ror after the jury have retired from the bar, but by order of court, 476
95. A sheriff failing to summon a grand jury and return a pannel, shall forfeit 30*l*. 476
96. A juror guilty of embracery, shall be disqualified from serving on juries, 476 and forfeit ten times the value *qui tam*, 476
- D.**
- DAMAGES.**
- See court of appeals, No. 27.
- DEEDS.**
- See conveyances.
- DESCENT.**
1. Estate how to descend, 557
2. To the intestate's children, 557
3. If none, to his father, 557
4. If none, to his mother, brother, and sisters, 557
5. Mother not to inherit in certain cases, 557
6. Father not to inherit in certain cases, 557
7. Where the estate shall be divided into moieties, and how disposed of, 558
8. No right to accrue, unless the person be in being, 558
9. Where there is no maternal kindred, the whole to the paternal, and *vice versa*, 558
10. Half blood how to inherit, 558
11. Where to take *per capita*, where *per stirpes*, 559
12. Where estate shall be brought into hotch pot, 559
13. Alienage no bar to descent, 559
14. Bastards may inherit, &c. on the part of the mother, 559
15. Certain issue limited, 559
16. When estate descends to two or more one of whom is an infant, &c. and the share of each exceed not the value of 30*l*, may be sold, 559
17. One parcener may maintain waste against another, 560
- DEVISE.**
- See fraudulent devises and wills.
- DISTRIBUTION.**
- See wills.
- DISTRESS.**
- See sheriffs, Nos. 18, &c.
- DISCLAIMER.**
- See civil proceedings, No. 85, and chancery, No. 36.
- DISTRICT COURTS.**
- See courts.
- DIVISION OF LANDS.**
- See prelection to chap. 50, page 123, likewise pages 148, 180, 255, 279, & 689.
- ⚡ The provisions of the last act only are de-
- tailed. There is abundance of repetition on this subject, and some difficulty—The reader is advised to examine all the acts.
1. Where a person dies intestate having executed a bond to convey land, the county court may appoint three commissioners who shall convey 690
2. Which shall be valid, 690
3. Writing under which conveyance is made, to be recorded, 690
4. Exception of cases of fraud, 690
5. Where lands are held in conjunction with non-residents, commissioners to be appointed, who shall make division, 691
6. Their fee, 691
7. Shall convey to the party entitled thereto, 691
8. Re-division may be had, 691
9. Division between citizens, 691
10. And where one party is an infant, or *feme covert*, 692
11. When the infant hath no guardian, court may appoint one, 692
12. Infants may have re-division when of age, 692
13. Any joint owner of land may save his part from forfeiture by paying the tax, 692
- DOWER.**
- Relinquishment of, (act concerning) 152
1. Widow may remain in the mansion-house until dower is assigned her, 517
2. May have an action against those who may deforce her of her dower, 517
3. May demand dower of land recovered of her husband by default, 517
4. If a widow hath her dower by favor, default, or collusion, the heir may have an action when of age, to demand the seisin of his ancestor, 517
5. The default of a widow not a bar of dower, 518
6. Form of a writ of dower, 518
7. Widows may bequeath the crops of their land held in dower 518
8. Wife living with adulterer to be barred of dower, 518
9. Jointure a bar of dower, when, &c. 518
10. Widows evicted of jointure, may demand dower, 519
- ⚡ See wills, No. 27.
- E.**
- ENTRY BOOKS,** 338
- ENUMERATION,**
- Acts for, 166 & 224
- ESCAPES,**
- June, 1792.*
1. Any justice of the peace or judge of

- that court by whose authority a prisoner was committed, may issue as many escape warrants as may be necessary, if he escapes, (1796) } 85
 2. Escape warrants to be signed and sealed—shall recite the cause of imprisonment and time of escape, } 85
 —(1796) } 591
 3. Shall be directed to all sheriffs and constables within the commonwealth, (1796) } 85
 4. The officer re-taking on an escape warrant, to convey the prisoner to the jail of the county where the re-taking shall be, (1796) } 85
 5. Shall take a receipt from the sheriff or jailor of such county, and return the warrant to the court by whose authority the prisoner was committed, (1796) } 85
 6. If the prisoner was committed in execution, he shall be kept in custody without bail or mainprize until he shall have satisfied the debt, or been otherwise discharged by due course of law, (1796) } 85
 7. If he shall have been committed for a breach of the peace or behaviour, the sheriff to whom he is committed after re-taking, shall cause him to be removed to the jail from whence he escaped, } 85
 8. If he shall have been charged with a crime, and by the county court adjudged to be tried in the court of oyer and terminer, [District court, 1796.] then such sheriff shall cause him to be removed to the jail of that court, (1796) } 86
 9. If he shall have escaped before it was determined whether he should be tried in that court or not, then to the jail of the county from which he escaped, (1796) } 86
 10. Judgment shall not be entered against any officer for the escape of a debtor, unless the jury expressly find that the prisoner escaped with the consent or through the negligence of the officer or his deputy, or that he might have been re-taken, but that the officer neglected to make immediate pursuit, (1796) } 86
 11. In cases where the escape was not with the consent or through the negligence of the officer, damages may be recovered against any person aiding it, (1796) } 86
 12. Furnishing a prisoner with instruments to make his escape, shall be a misdemeanor, although no escape is effected, (1796) } 86
 13. Where the sheriff shall have cause to suspect that a person committed for felony, will escape or be rescued, he may summon a guard so long as he shall continue in prison, the expenses of which shall be paid by the county, (1796) } 86
- ESTATES.
 See Conveyances.
- EXECUTORS AND ADMINISTRATORS.
 See Wills.
- EXECUTIONS.
November, 1792.
 1. Writs of *fi. fa. ca. fa. or elegit* for taking the goods and chattels [lands 1796] or person of a defendant, may within a year, be sued out on all judgments of a court of record, } 137
 —(1793 & 1796) } 206
 2. Such writs shall issue in the name of the commonwealth, and be returnable to the next court, provided there be no more than 90 days between teste and return, } 138
 3. An execution may issue returnable to a court day of an ulterior term, provided it be within 90 days, } 138
 4. All writs shall be in the forms herebefore used and practised, (1793) } 138
 [Forms given, 1796] } 206
 5. Where a person dies in execution, the plaintiff, or his representatives, may have new execution against his lands and tenements, goods and chattels, (1796) } 138
 6. Provided they shall not have been *bona fide* sold for the payment of any of his creditors, (1796) } 540
 7. The plaintiff may sue out a new execution (at his own costs) provided the first one be not returned executed, [1793 & 1796] } 138
 8. Where a *ca. fa.* shall be returned *non est inventus*, a *fi. fa.* may issue, —[1793 & 1796] } 207
 9. On a *fi. fa.* returned *nulla bona*, a *ca. fa.* may issue, [1793 and 1796] } 539
 10. When one judgment is obtained against several defendants, both a *fi. fa.* and *ca. fa.* may issue, [Repealed in 1793, page 207] } 139
 11. No writ of execution shall bind the goods [or lands, 1796] against which it issued, but from the time it was delivered to the officer, (1796) } 540

12. The officer shall endorse thereon the day, month and year when it came to hand, (1796) } 139
540
13. If two or more writs be delivered on the same day, he shall execute that first which was delivered first, (1796) } 139
540
14. If the judgment is not satisfied in 20 days after a *fi. fa.* levied, the sheriff may sell at auction as much of the goods levied on as will satisfy it, (1796) } 139
542
15. He shall give notice of the time and place of sale, by advertising at the court and meeting-house doors and at the most public places in the county ten days before the day of sale, (1796) } 139
543
16. If the debtor will give security to have the goods forthcoming at the day of sale, the officer shall accept it, and leave the goods with him, (1796) } 139
543
17. Where execution shall issue on a debt contracted before the first day of February, 1793, the defendant may replevy for three months, *sub modo*, the creditor approving the security, (1796) } 139-140
545
18. Where he shall not replevy the goods, and they will not sell for three-fourths of their value, they shall be sold at a credit of three months, with bond and security, (1796) } 140
545
19. All bonds taken by virtue of this act, shall mention that they were entered into for goods, &c. taken and restored to the debtor, or sold to the obligors, as the case may be, (1796) } 140
545
20. Such bonds shall be returned to the clerk's office and have the force of judgment, (1793 & 1796) } 140
207
546
21. If they should not be paid, the clerk may issue execution on the application of the party, ten days notice having been given, (1793 and 1796) } 140
207
546
22. Such execution shall be endorsed, no security to be taken, and shall be levied immediately, (1793 and 1796) } 140
208
546
23. The provisions of this act not to extend to sheriffs or collectors, (1796) } 140
546
24. Slaves not to be taken on a *hæc facias* provided goods or lands in a settled part of the county are shewn, (1796) } 141
544
25. No collector of revenue or levies shall seize on slaves, if other sufficient distress can be had, (1796) } 141
545
26. Any officer making unreasonable seizures, liable to an action grounded on this act, (1796) } 141
545
27. A debtor may release his body from execution by delivering a sufficiency of property, [1793 & 1796] } 209
544
28. Where the sheriff shall take negroes or live stock and they shall not be redeemed, he shall be paid for keeping them, [1796] } 141
541-2
29. Sheriff returning on a *fi. fa.* that he has made the money, and not paying it over to the party to whom payable, or his attorney, liable on motion of such party or attorney to the succeeding court, (1796) } 141
551-2
30. Ten days previous notice shall be given of such motion, [1796] } 141
552
31. Where goods taken in execution shall remain in the officer's hands for want of buyers, he shall so return it and a *conditioi expensas* shall issue according to the form heretofore practiced. [Form given in 1796] } 142
541
32. On such writ the sheriff shall sell for cash or on credit, as he and the plaintiff shall think best, } 142
33. Where a defendant removes himself or effects, or resides out of the county where the judgment was obtained, a *fi. fa.* or *ca. fa.* may issue to any county in the state where he or his goods or lands can be found, [1793 & 1796] } 142
208
541
34. Debts taken in execution may be admitted to prison bounds, [1796] } 142
547
35. When a person committed for debt or damages has remained in prison 20 days, he may be discharged in manner following, [1796] } 142
547
36. He must petition two justices of the peace to be brought before them, [1796] } 143
547
37. They shall issue their warrant under hand and seal, directed to the sheriff or jailor, requiring him to bring the prisoner before them at the court-house on a day certain, with a list of the executions, [1796] } 143
547
38. Notice shall be given to the creditor, his representatives or agents, if living within the county, [1796] } 143
548
39. Such debtor taking and subscribing the oath prescribed by this act, and delivering in a schedule of his estate shall be discharged, [1796] } 143
548

40. The schedule shall be lodged with the clerk of the court for the information of creditors, [1796] } 143
 } 548
41. All the estate contained in the schedule, except the wife's dower, shall vest in the sheriff of the county where it shall be found, } 143
 } 548
42. The sheriff shall sell and convey the same for the best price that can be got, to any person whatever, (1796) } 144
 } 549
43. Saving to the prisoner his necessary apparel, arms, accoutrements and utensils of trade, [1796] } 144
 } 549
44. The justices shall then issue their warrant for discharging the prisoner; which warrant shall indemnify the sheriff in all suits brought against him for discharging him, [1796] } 144
 } 549
45. A *scire facias* [*feri facias*, 1796] may be sued out to have execution of after acquired property, } 144
 } 549
46. Where a debtor in execution is unable to pay his prison fees, they shall for the first 20 days be paid by the county, } 144
 } 550
47. Afterwards the creditor shall pay them until he shall consent to a discharge, } 144
 } 551
48. If the creditor shall fail to give security for the payment of such fees, or shall fail to pay them when demanded, the prisoner shall be discharged, [1796] } 144
 } 551
49. The creditor may nevertheless recover such fees from the defendant by action, [1796] } 145
 } 551
50. A *scire facias* may issue to have execution of after acquired property, (1796) } 145
 } 551
51. Executions shall be tested by the clerks and returnable to rule days of court, (1796) } 206
 } 535
52. Not to be less than 30 nor more than 90 days between the teste and return, (1796) } 206
 } 535
53. Executions may be issued from the court of appeals returnable as directed by the act establishing a court of appeals, (1796) } 206
 } 535
54. Where a judgment is obtained against several defendants, execution shall issue as if it was against one and not otherwise, (1796) } 207
 } 539
55. A forthcoming bond shall state the service of the execution and the amount of the principal, interest and cost due thereon, (1796) } 207
 } 543
56. It shall distinguish particularly the principal, interest and costs, (1796) } 207
 } 543
57. It shall be conditioned to have the goods and chattels forthcoming at the day of sale, (1796) } 207
 } 543
58. On the condition not being complied with or the money not paid, it shall be returned to the clerk's office & have the force of a judgment, (1796) } 207
 } 543
59. The person to whom it is payable, his executors or administrators may on motion in court, have an award of execution on such bond, (1796) } 207
 } 543
60. Such execution shall be for the amount with interest from the date until payment and costs, (1796) } 207
 } 543
61. The obligors, their executors or administrators, shall have ten days notice of such motion, (1796) } 207
 } 543
62. On an execution on such bond, the sheriff shall keep the goods and chattels in his hands until he has raised the money due, or the execution be otherwise satisfied, (1796) } 207
 } 543
63. The sheriff for failing to return a forthcoming bond within sixty days after the date, shall be fined by the next succeeding court not exceeding 10*l* per month, (1796) } 208
 } 544
64. The sheriff shall have ten days notice of the motion for such fine, (1796) } 208
 } 544
65. Shall be liable to the action of the party aggrieved, (1796) } 208
 } 544
66. On judgments obtained on contracts made before the first day of February, 1793, the clerk shall endorse that matter on the execution, (1796) } 208
 } 45
67. Provided the fact appears from the declaration, writ, bond, bill or note, or any other paper filed in the cause, (1796) } 208
 } 545
68. In such cases the defendant may reply, whether the security is approved or by the creditor or not, (1796) } 208
 } 545
69. A person taken on a *capias ad satisfaciendum*, shall be released on giving up lands, slaves or personal property, (*sub modo*, 1796) } 209
 } 544
70. If such property be insufficient or encumbered, another *capias ad satisfaciendum* or a *feri facias*, at the option of the plaintiff shall issue, (1796) } 209
 } 544
71. But where the property was encumbered, the defendant shall neither tender property on a new *capias ad satisfaciendum*, nor replevy on a new *feri facias*, (1796) } 209
 } 544
72. When the amount of the sale shall exceed the execution, the sheriff shall pay the surplus to the debtor, (1796) } 209
 } 546
73. On failing so to do, shall be subject

- to the same penalties and proceeding as for failing to pay money collected to the creditor, (1796) } 210
546
74. Lands shall not be sold by *fiery facias* on contracts entered into before the 17th day of December, 1792. 210
75. If it shall appear from the writ, declaration, or any paper filed as evidence that the contract was entered into before that day, the clerk shall endorse it on the execution, 210
76. An execution so endorsed shall not be levied on lands, 210
- Session of 1794.*
77. The obligees in a replevin bond, their executors, administrators or assigns, at any day after payment, may without motion in court or notice, demand execution for principal, interest and costs, 270
78. The provisions of this act shall not extend to forthcoming bonds, 270
79. Executions issued from the county court, shall be returnable to the first day of each succeeding court, 270
80. But there shall not be less than 30, nor more than ninety days between the teste and return, 270
81. Where lands are tendered on a *capias ad satisfaciendum*, the sheriff shall proceed to sell, but shall not discharge the debtor until the execution is satisfied, (1796) } 270
544
- Session of 1795.*
82. Executions may issue from the district court returnable to the first day of such court, 311
83. If a bond for the delivery of property be qualified as faulty, the sheriff who took it shall at all times be liable to the party, 311
- Session of 1796.*
84. Where a replevin or forthcoming bond shall be qualified as faulty, the obligee, (besides his remedy against the sheriff) may have execution of his judgment in the same manner as if no such bond had been taken, 546
85. When an injunction is obtained before the sheriff shall have paid over the money to the plaintiff, he shall repay it to the defendant, 547
86. If he fails so to do, he shall be liable as for failing to pay to the plaintiff, money levied on an execution, 547
87. The sheriff is liable on motion for a voluntary escape on a *capias ad satisfaciendum* for the amount of the debt and damages, in the same manner as if he had levied the money and failed to pay it over, 552
88. On a final decree in chancery, any execution may issue which may on a judgment at law, 538
89. But this shall not supersede the final judicial process peculiar to courts of chancery, 539
90. Where part of a debt shall be levied on an elegit, a new elegit may issue, 539
91. Where *nihil* has been returned on a writ of *eligit*, a *capias ad satisfaciendum* or *fiery facias* may issue, and *vice versa*, 539
92. If tenant by *eligit* shall be evicted, otherwise than by his own fraud or default, he may sue out a *fiery facias* against the debtor to have other execution. An extent on a judgment or recognizance shall not be avoided because part of the lands extendible are omitted, 539
93. Saving to the party whose lands are extended, right of contribution against those whose lands are omitted, 540
94. This contribution shall not extend to heirs within age, otherwise than before the passage of this act, 540
95. On a *venditioni exponas*, the like proceedings shall be had as ought to have been had on the first execution, 541
96. Goods or chattels on leased lands shall not be removed by virtue of execution, or on any pretence whatever until the landlord's rent (not exceeding the rent of one year) shall have been paid, 542
97. Where a sheriff or coroner fails to return an execution, he may be fined not exceeding five per cent per month on the amount of such execution, 551
98. Such fine may be imposed on motion, ten days notice being given, and shall go to the plaintiff in the execution, 551
99. A debtor in custody on several executions, shall demand diet on one only, 551
100. The sheriff or jailor shall demand no more, and that shall be paid by the proprietor of the first execution, 551
- Session of 1797.*
101. No notice or motion necessary on forthcoming bonds. 671
- EXPENSES.
- Governor to employ them, 648
- F.
- FEES.
- See Sheriffs, No. 46, &c.
- FENCES.
1. County-court may establish, 362

2. Notice of the application to be given, 361
 3. Where a river is the boundary between two counties, person owning land on one side, may establish a ferry by application to the court of his county, 361
 4. Party may appeal, 361
 5. Rates of ferriage, 362
 6. Penalty for demanding greater rates, 362
 7. Court to have power over boats and hands, 362
 8. Owner to give bond, 362
 9. Penalty for neglecting, 362
 10. Who shall pass free, 362-3
 11. Ferry-keeper free from certain duties, 363
 12. May obtain a licence to keep tavern without fee, 363
 13. Penalty on others than ferry-keepers setting others over for reward, 363
 14. How ferries may be discontinued, 363
 15. Proprietor may be summoned, 363
 16. Ferrymen may carry passengers from either side, 363-4
- FINES.**
- All fines and forfeitures imposed in tobacco by any law of Virginia in force in this state, may be recovered in money, at the rate of one penny per pound, 88
- See Criminal Proceedings, No. 83.
- FLOUR AND HEMP.**
- See Inspectors and Inspections.
- FRAUDS AND PERJURIES.**
1. No action shall be brought to charge any person in certain cases, unless the promise or agreement, or some note or memorandum thereof be in writing, 371
 2. Fraudulent gifts, grants, &c. of lands to defraud creditors or purchasers, void, 371
 3. Conveyances of goods and chattels without valuable consideration deemed fraudulent, unless by will or deed duly proved and recorded, 372
 4. Or unless possession remain with the donee, 372
 5. In what cases pretended loans, &c. of goods and chattels deemed fraudulent as to creditors, &c. 372
 6. When possession is evidence of property, 373
- FRAUDULENT DEVISES.**
1. Devisees of land, &c. void as to creditors, 598
 2. Creditor may have joint action against heir and devisee, 598
 4. Devisee liable for false plea, 598
 3. Exception of devisees for payment of just debts, or children's portion in pursuance of marriage contract or agreement, 598
 5. If the heir at law aliens the land, &c. before the suit commenced, he shall be liable to the value of the land, 599
 6. Heir may plead riens per descent, 599
 7. If found against him, jury to find the value of the land, 600
 8. Devisee liable in the same manner as heir at law, 600
- G.**
- GOVERNOR.**
- To offer a reward for apprehending criminals, 234
- To transmit certain papers to the secretary at war, 346
- Houses to be provided for his accommodation, 357
- GUARDIANS.**
1. County courts to have jurisdiction of all matters relating to orphans, 674
 2. Shall take good security of guardians, 674
 3. Penalty for failing so to do, 674
 4. Any father may grant or devise the custody or tuition of his child, 674
 5. Powers of such grantee or devisee, 674
 6. Power of the county court over guardians, 674
 7. Curator to be appointed if guardian fails to give security, 675
 8. Guardian, duties of, prescribed, 675
 9. Guardian's accounts how to be accepted to by ward, 675
 10. Court may compel guardian to give supplemental security, 676
 11. Proceedings against guardian failing in his duty, 676
 12. Regulations respecting the ward's estate, 676
 13. If the security be in danger of suffering, guardian may be compelled to give counter security, 676
 14. Guardian's estate first liable for what may be due from him to orphan, 676
 15. Guardian authorized to settle disputes in ward's land, 676
 16. Poor orphans to be bound out, terms of the indenture, 677
 17. Guardian may bind out his ward under the direction of the court, 677
 18. County courts to receive complaints of apprentices against their masters, &c. 677

H.

HABEAS CORPUS.

1. Writ of, 600
2. Proceedings on, 600
3. How to be issued, and by whom, 601
4. May be issued without seal, 479
5. Penalty for disobeying, 602
6. And for refusing, 603

HEIRS.

What actions may be brought against them, 128

HEMP.

See Inspectors.

HORSES.

November, 1792.

1. Any person may take up a stoned horse more than three years old running at large, 136
 2. Shall give notice to the owner or keeper, 136
 3. If the owner or keeper shall not take him away, shall take him before some justice of the peace, 136
 4. Such justice shall cause the horse to be gelded, 136
- See Strays.

J.

JAIL, PUBLIC.

To be erected, &c. 136

JAILOR, PUBLIC.

See district courts, Nos. 16 & 17.
Of the Franklin district, act to provide for, 696

JEOFAILS.

See civil proceedings, Nos. 117, &c.

IMPEACHMENT.

November, 1792.

1. A person desiring to impeach the governor or any other civil officer, shall state in a petition to the house of representatives the facts on which he means to found it, 132
2. Shall sign and subscribe it in the presence of two witnesses, and accompany it with an affidavit of the truth of the facts, 132
3. The petition shall be referred to a select committee, who shall take the matter under consideration and report thereon to the house, 132
4. If the house on such report shall resolve that an impeachment take place, they shall appoint persons to manage the same, 132
5. The managers shall draw up the impeachment, charging the facts, sign it and lodge it with the clerk of the senate, 132-3

6. The clerk shall issue a summons, with a copy of the impeachment, against the person accused, which shall be executed by the sergeant at-arms, 133
7. The person appearing, the senate may make such order respecting his answer and other proceedings as may seem reasonable, 133
8. Every fact put in issue, shall be tried by a jury of the county where the assembly is sitting, 133
9. Witnesses may be summoned and compelled to attend, both on the part of the prosecution and on the part of the accused, 133
10. They shall be entitled to the same allowance and privileges, and subject to the same penalties as witnesses attending the court of appeals. The judgment and whole proceedings of the senate shall appear on the journal, 134
11. The judgment, if in favor of the accused, shall instantly restore him to the right of exercising his office; if against him, shall vacate it, 134
12. The members of the senate shall take an oath to act impartially, 134
13. If the person accused shall be acquitted, he shall recover against the prosecutor such costs as were taxable in the supreme court, 134
14. If convicted, he shall pay the prosecutor his costs, and in either case execution shall issue from the clerk of senate, 134

INFANCY.

Not to delay certain actions, 128

INFANTS.

See Guardians.

INJUNCTIONS.

See Chancery, Nos. 69, 70, &c.

INSPECTORS AND INSPECTIONS.

November, 1792.

1. Inspectors of flour, hemp and tobacco, to be appointed at each inspection, and commissioned as the constitution directs, 135
 2. To take oath of office, and perform the duties agreeable to the laws of Virginia in force at the time of separation, 135
 3. Shall be subject to the same penalties and forfeitures, recoverable in the same manner, and receive the same fees, 135
 4. The same person may act as inspector of both articles, 135
- Session of 1794.*
5. Several inspections of hemp and flour

GENERAL INDEX.

727

- established, and general provisions respecting them, 258-9
6. Inspectors to be appointed by the county courts, 258-9
- Session of 1795.*
7. Sundry inspections established, 330
8. Inspectors to be appointed by the governor, 330
9. May be removed by him, 331
10. Qualities of flour, 331
11. Casks how to be made and marked, 331
12. Penalty, &c. 331
13. Mode of inspecting and proceeding in detail, 332, 333 & 334
14. Commissioners to be appointed to examine ware houses, 335
15. To report to the county courts, &c. 335
16. Flour remaining more than nine months in a ware-house to be sold, & the money put in the treasury, 335
- Session of 1796.*
17. Act for inspection of flour and hemp, [Feb 1797] 370
606
18. Inspectors to be appointed, 379
19. Courts may contract for other ware-houses in certain cases, 379
20. Flour and hemp may be stored in any place, 379
21. May be inspected on board a boat, 379
22. Ware-house to be kept in repair, 380
23. Penalty on exporting flour, &c. unimported, 380
24. How to be recovered and applied, 380
25. Inspector's fees, 380
- JOINT RIGHTS.**
- See Partitions.
- JURIES, GRAND.**
- See Criminal proceedings, Nos. 37, 38, &c.
- JURIES, PETIT.**
- See Criminal proceedings, Nos. 87, 88.
- JUSTICES.**
- June, 1792.*
1. Their fees, 112
2. Each Justice shall keep a fair record of all his proceedings, in books to be provided by him for that purpose, 113
- November, 1792.*
3. New fees given, and the former act repealed, 124
4. Each justice to keep a fair record of his proceedings, 125
5. The governor by appointment may fill any vacancy in the office of justice which shall happen during the recess of the assembly, 149
6. The governor may with the consent of the senate appoint an additional number of justices in any county, 149
- Session of 1793.*
7. On a trial before a single justice dis-
- counts shall be allowed on reasonable notice, and the justice shall give judgment for either plaintiff or defendant, as the case may be, 204
8. Any justice giving to a constable a blank summons, with authority to fill it up, shall forfeit \$1. recoverable in the quarter-session court on motion or information, to the use of the party aggrieved, and be subject to removal from office, 218
- Session of 1795.*
9. All justices are required to see the act against vagrants put in execution, 291
- K.**
- KENTUCKY HERALD.**
- All advertisements printed in, as valid as in the Kentucky Gazette. 695
- L.**
- LANDS.**
- See selling lands by *fiery facias*, division of lands, processioning, conveying, &c.
- Further time to enter with the auditor, 379
- Act for suspending the sales of, 516
- LAWS CONCERNING THE TITLES TO LAND.**
- Collected from the Virginia acts.*
- CAVEATS.**
1. Proceedings depending at the revocation, 406
2. Causes for entering, 412
3. Proceedings upon, 412
4. To be entered by person claiming land surveyed for another before the opening the land office, 426
5. Caveats may be entered against the judgments of the commissioners, 404, &c.
6. Regulations to prevent friendly caveats and delay in real, 440
7. List of caveats entered to be returned to the deputy register, 441
- COMMISSIONERS.**
1. Commissioners appointed to adjust and determine claims to lands for settlement, &c. 399
2. How long to continue in office, 400
3. To take an oath and the form of it, 400
4. Their power and jurisdiction, 400
5. Shall give public notice of the time of meeting, 401
6. Shall appoint a clerk, his duty, 401
7. Shall have free access to the surveyor's books, 401
8. Amongst settlers to whom to give the preference, 401
9. Clerk to the commissioners to keep minutes, and enter the names of those

- to whom settlements, &c are adjudged, with their quantities and locations, &c. 401
10. In certain cases, commissioners to direct a summons to be issued, go on to trial and determine the right, in which case judgment shall be final, 402
11. Commissioners may remove force, 402
12. Shall deliver a certificate of lands adjudged for settlement, containing the number of acres, the time of settlement, and the location, 402
13. And also a certificate of the rights of pre-emption, containing the quality, cause of pre-emption and location, & a memorandum of the last day the land can be entered with the surveyor 403
14. What is to be paid for the certificate, 403
15. Commissioners shall transmit to the register a list of all the certificates granted, 403
16. They shall also give a certificate to those to whom they adjudge land surveyed for any company, 403
17. But the title of such persons shall be forfeited unless they pay or tender to the company the price, 404
18. Allowance to commissioners, clerks, and sheriffs, 404
19. In what case the judgments of the commissioners may be reversed by the general court, 404
20. Time of the sitting of the commissioners prolonged, 424
21. Commissioners to certify what actual settler is unable to pay for his warrant, 424
22. Shall issue no certificate unless the party hath taken, or shall take the oath of allegiance, 425
23. Further time given, except in Kentucky, to the commissioners, 426
24. The county courts to hear and determine disputes left unfinished by the commissioners in Kentucky, 431
- COMPANIES CLAIMING LANDS UNDER ORDERS OF COUNCIL.**
1. How agreement between them and purchasers regulated, 399
2. When to be laid before the commissioners, 399
3. How certificate is to be given, 403
4. How title forfeited, 404
5. Patents to issue to those who purchased of companies, and have certificates from the commissioners on paying the purchase money to the companies, 449
6. Distress may be made for arrears of such purchase money, 449
- COUNCIL ORDERS OF, AND ENTRIES IN THE COUNCIL BOOKS.**
1. Claimed by virtue of, when good, 392
2. When not good, 394
3. On surveys on, to pay composition money, 394
4. Claimsto be laid before the court of appeals, 405
5. Not to extend to officers and soldiers 405
- ENTRIES.**
1. Settlers entitled to entries with the surveyor upon producing certificate, &c. 396
2. On pre-emption warrants, 397
3. How to be made, 410
4. None to be made with the surveyor without warrants, except on certificates for settlement, 410
5. None shall be made in the limits of the Cherokees on the N. W. of the Ohio, or on lands reserved for any Indians, or granted to Henderson, and co. or reserved for officers and soldiers, 411
6. Certain entries declared to be legal, 411
- IMPORTATION RIGHTS.**
1. What surveys made on entries by virtue of, good and valid, 392
2. What certificates of good, and what void, 393
3. Within what time to be produced to the register, 393
- LAND-OFFICE.**
1. Land-office constituted, 406
2. All papers relating to titles to lands removed to it, 406
3. A register appointed, 407
4. Shall record all land warrants, and 405
5. How to issue grants, 405
6. Copies of papers removed from the secretary's office attested by the register as good evidence as the originals 407
7. Register to give a receipt for surveys returned, 413
8. Register to leave a margin in his book to note exchange of warrants, &c. 414
9. Register to record plat, certificate and grant, 415
10. Form of grant, and how to be issued, 415
11. General court to cause the land-office to be examined, &c. 419
12. Register to issue pre-emption warrants to actual settler upon a certificate from the commissioners on credit, 424
13. Register not to issue grants in certain cases, 425

14. Plat and certificate in Kentucky to be lodged with the deputy register, 431
15. Register may issue inclusive grants, 460
- MILITARY SERVICES, LANDS GRANTED FOR.
 1. What surveys made by virtue of military warrants, good and valid, 392
 2. When necessary to re-survey, and what time to be returned, 393
 3. Warrants for military services how to be obtained, 394
 4. No claim for allowed, unless a warrant was obtained from the governor of Virginia under the former government, or the claimant was an inhabitant of Virginia, or the services performed in a corps raised therein, nor for services in the militia, 395
 5. All locations made by officers and soldiers on the lands of actual settlers, shall be void, 397
 6. But they may obtain new rights and how, 398
 7. Rights to lands offered as bounties to officers and soldiers, how to be authenticated, 407
 8. Warrants how to be obtained, located and executed, 408
 9. Boundaries of land reserved in Kentucky for officers and soldiers, 411
 10. Proportions to officers, soldiers and sailors ascertained, 422
 11. Rights of decedents shall descend to their heirs, 422
 12. Warrants for further time given to exchange, 426
 13. Officers, &c. shall only be entitled for highest rank, &c. 428
 14. List of warrants for military services to be kept, 428
 15. Warrants for, within what time to be located, 434
 16. Locations made on military warrants under former government not interfering with settlers, good upon re-entering, &c. 434
 17. But they need not be exchanged, 435
- POOR PERSONS, RIGHTS OF.
 1. County courts authorized to grant orders of survey, how and upon what terms, and for what quantity, 430
 2. How to be executed, 431
 3. Further time to lay in their claims, &c. 441
- PRE-EMPTIONS.
 1. Pre-emptions of 400 acres, who entitled to, 397
 2. Pre-emptions of 1000 acres, who entitled to, 397
 3. No person shall have a right to a pre-emption for more than one such improvement, 397
 4. To prove their rights before the commissioners within eight months, pay the consideration, &c. and enter with twelve months, 397
 5. Pre-emption warrants not to be entered for a certain time, 398
 6. If not entered within a certain time, right of pre-emption forfeited, but may still be located, 398
 7. First settler to have the preference, 401
 8. In pre-emption for improvement, first improver, 401
 9. Person obtaining pre-emption to fix the quantity, 401
 10. Certificate how given by the commissioners, 401
 11. Further time to officers and soldiers to ascertain their claims to, 421
 12. Pre-emption warrants, further time to enter, 433, 438, 440, 452, 453, 455, 457
 13. Where certificate is lost, how to obtain warrant, 427
 14. Further time to obtain warrants, 433
 15. County courts to hear and determine disputes in surveying, 433
 16. Certificate granted by county court not of itself conclusive proof of the title, 452
 17. No county court hereafter to grant certificate for, 456
- SETTLEMENTS AND PRE-EMPTIONS.
 1. Settlement of 400 acres granted to actual settlers, 396
 2. Also to those settled in townships and villages, 396
 3. When any actual settler had had a survey made for less than 400 acres, may have the quantity made up, 396
 4. 640 acres whereon such township is, to be reserved, &c. 396
 5. The proper claimants entitled to entries with the surveyor upon producing certificates, and in what time, 396
 6. The surveyor to record the certificate and proceed to survey, 396
 7. Settlers entitled to the pre-emption of 1000 acres, &c. 397
 8. Who shall be considered a settler, 397
 9. Entries made on certificate for settlement preferred to those on pre-emption warrants, 397
 10. Composition money to be paid for settlement, 397
 11. In disputes upon claims for settlements, the first actual settler to have the preference, 401

12. Certificate how given by the commissioners, 403
13. Further time to officers and soldiers to ascertain their claims to, 421
14. Pre-emption warrants, further time to enter, 433, 438, 440, 452, &c.
15. Where certificate is lost, how warrant is to be obtained, 427
16. Further time to obtain pre-emption warrants, 433
17. County courts to hear and determine disputes in surveying, 434
18. Further time to enter certificates for settlements, 440, 451, 453, 456, 457
19. Certificate granted by county court not of itself conclusive proof of the title, 452
20. No county court hereafter to grant certificate for settlement and pre-emptions, &c. 456
- SURVEYS.**
1. What made previous to the first day of January, 1778, declared to be good and valid, 392
2. What surveys declared null and void, 393
3. Upon what composition money is to be paid, 398
4. When grants to issue upon payment of fees only, 398
5. Surveyor for every county and deputies how to be appointed and qualified, 409
6. Fees of, and penalty on deputy agreeing to give, and principal to take a greater share, 409
7. Surveyor shall, at the time of making entries for persons not inhabitants, appoint a time for surveying and give notice in writing, 410
8. Surveyor how to enter his own warrants, 411
9. Surveyor shall proceed with dispatch to survey all lands entered in his office, shall give notice and how, 411
10. Penalty on person failing to attend, &c. 411
11. Duty of surveyor in making the survey, returning it, &c. 412
12. No person shall be clerk of a county court and surveyor, 413
13. Penalty on surveyor for failure in duty, 413
14. County court shall appoint persons to examine surveyor's office, 413
15. Survey to be returned to the register's office within 12 months, or if not legally made, or any person hath a better right, may be caveated, 413
16. Made assignable, 415
17. Foreigner allowed 18 months either to become a citizen, or transfer his right to survey, 415
18. No copy of a survey to be delivered except to the party or his order, within 12 months, unless a caveat is entered, 416
19. Further time to return surveys to the land office, 433, 438, 440, 452, 453, &c.
20. Surveys may be received without the warrants, 450
21. Surveys shall be made and returned on or before the first of February 1786, 451
22. Act directing surveys to be made on or before the first of February, 1786, repealed, 454
23. Surveyors to give notice to owners or their agents, when they will proceed to survey their entries, &c. 454
24. Owner shall appoint agent in the county where the land lies, 454, 455, &c.
25. Certain surveys declared to be legal, 455
26. No original plat and certificate of survey carried into grant shall be delivered out of the land office, 462
- TREASURY RIGHTS.**
1. Survey upon treasury rights for money paid the receiver-general, what declared to be good and valid, 394
2. Any person paying forty pounds per hundred to the treasurer, may obtain a certificate from the auditor and a warrant from the register, 408
3. How to be executed, 408
- WARRANTS.**
1. For military service, how to be obtained, 393
2. Pre-emption warrants how to be obtained and when, 405
3. Warrants may be executed in one or more surveys, and exchanged or divided, and shall be in force until land is obtained by them, 408
4. How to be obtained, located and executed, 408
5. New warrant to be issued to person losing land by judgment on caveat, 414
6. Warrants made assignable, 415
7. Stealing or forging a land-warrant, felony, &c. 419
8. Penalty for violent opposition to the execution of, &c. 423
9. Pre-emption, further time to enter [433, 438, 440, 452, &c.]
10. If warrant lost, how a duplicate may issue, 427
11. Further time to obtain pre-emption warrants, 427, &c.
12. Pre-emption warrant may be entered on any waste land in the district, but shall lose the force of pre-emption, 439
13. Not to be destroyed, 462

- | | | | |
|--|-----|---|-----|
| 14. Treasury warrant when it may be entered, | 408 | survey, on which the date of the entry is not certified, | 165 |
| 15. Method to obtain grants of vacant swamps contiguous to high patented land, | 416 | 18. Prohibited under the same penalty, from issuing any grant on an entry made since the first day of May, 1792 | 165 |
| 16. How to take up surplus land, | 417 | 19. Every entry so made, every survey and patent founded on such entry, declared null and void, | 165 |
| 17. Method of rectifying mistakes in bounds, and obtaining inclusive patents | 418 | 20. The penalties above, to be recovered by the auditor, on motion in any court of record, | 165 |
- LAND OFFICE.**
- June, 1792.*
- | | | | |
|---|----|--|-----|
| 1. Constituted, | 75 | 21. The register is offending, liable to removal from office, | 165 |
| 2. Register to be appointed, and to give bond with security to the governor in the penalty of 5000 <i>l.</i> current money, | 75 | <i>Session of 1793.</i> | |
| 3. To hold his office during good behaviour | 75 | 22. The register of the land office shall deliver to the owner any land office treasury warrant, in part only executed, | 174 |
| 4. To receive such fees as were receivable under the laws of Virginia, | 75 | 23. The person applying shall produce to the register the certificate of a principal surveyor, who shall have acted on such warrant, certifying how much is executed and unexecuted, | 174 |
| 5. Governor may make a temporary appointment in case of vacancy, | 75 | 24. Such certificate, the owner's name, number of acres, and number of the warrant, shall be entered in a book, and no grant shall ever issue for the balance, | 174 |
| 6. Register to provide books and other necessary appendages to his office [at his own expence by the Nov. act] | 75 | 25. The register shall deliver to the party the surveyor's certificates, and shall endorse on the warrant the part returned, and that the balance remains unexecuted, | 174 |
| 7. All records of land titles when obtained from Virginia, to be deposited in the register's office, | 75 | 26. Where land warrants shall not have come to the hands of the surveyor surveying an entry, he shall certify the same, and the register shall thereupon receive the plats and certificates, | 216 |
| 8. All certificates of surveys hereafter to be made, to be returned to the register's office, | 75 | 27. He may receive them where the number of the warrant is not specified, and in both cases shall issue grants in the usual form, | 216 |
| 9. All future grants for land to issue therefrom, | 75 | 28. Locations on islands in the Ohio below the mouth of Green river, shall be surveyed by the surveyor of the continental line or his deputy, | 216 |
| 10. Land office to be kept where the legislature hold their session, | 76 | 29. Such surveys shall be recorded in his office, returned to the register, and patents shall issue as in other cases, | 216 |
- November, 1792.*
- | | | | |
|--|-----|--|-----|
| 11. Plats and certificates lodged with the deputy register under the act of 1791, to be returned to the register's office, | 159 | <i>Session of 1794.</i> | |
| 12. Grants to issue thereon as if they had been returned to the register's office of Virginia, six months before the separation, | 159 | 30. The register shall receive and issue grants on all certificates of survey, which were in the register's office of Virginia at the time of the separation, on which grants have not issued, | 235 |
| 13. Deputy register to deliver over all books, papers, &c. to the register, | 160 | <i>Session of 1796.</i> | |
| 14. Lands granted to the grantee by name after his death, shall descend to his heirs or devisees, | 160 | 31. Register's office placed on the civil list, | 358 |
| 15. The compensation on poor rights to be paid into the register's office in specie, where it has not been paid to Virginia, | 160 | | |
| 16. Fees for services in the register's office to be paid in specie, at the rate of 8 <i>s.</i> 4 <i>d.</i> per 100 <i>lbs</i> of tobacco, | 160 | | |
| 17. The register prohibited under a penalty of 200 <i>l.</i> from receiving into his office any plat and certificate of | | | |

32. All fees for services performed in the register's office, shall be accounted for and regularly paid into the treasury at the end of every six months, 368
33. The register shall account on oath or affirmation, for all fees which shall have accrued up to that time, 368
34. His account of fees received, shall be fairly stated and compared by the auditor with the books of his office, before the accounts shall be passed, 368
35. If the register shall fail to account according to the directions of this act, he shall forfeit 2000*l.* recoverable in any court of record, on motion of the attorney general, on 30 days notice, 368
36. On all motions for money due from the register, the *onus probandi* shall lie on the defendant, 368
37. The register shall enter into bond with security to the governor, for the faithful discharge of the duties of his office, 368
38. On receiving into the land office each survey, all the fees of office including the issuing of the grant, shall be paid down, 368
39. If the register shall give credit for fees, he shall answer for them in the same manner as if he had received them, 369
40. The register shall hereafter receive the sum of 200*l.* per annum, payable as other salaries are, 369
41. All the necessary implements of the register's office, shall be provided at the public expence—the account of which must be approved by the governor, on which the auditor shall issue his warrant therefor, 369

LAWS.

1. Act declaring when certain shall commence, 508 & 672
2. Act concerning the revision of, 293
3. Omission in a former act supplied, 672
4. Governor directed to convey copies of, 681
5. How to be distributed, 682

LIMITATION OF ACTIONS.

1. In writs of right, 380
2. Other possessory actions, 381
3. In *formedon*, 381
4. Personal actions, 381-2
5. On account for goods, &c. sold, 382
6. Certain periods not to be calculated, 383
7. Certain persons excluded from the benefit of, 383-4
8. In criminal cases, 475

M.

MANDAMUS.

- See Court of Appeals, No. 16, District Court No. 27.

MASTERS.

- See Guardians, No. 18.

MILLS & MILLERS.

1. How a person wishing to erect a mill and owning lands on one side of a water course, is to proceed, 606
2. Writ of *ad quod damnum*, 606
3. Where the water course is the boundary between two counties, duty of the jury, 607
4. Charge to be given by the sheriff to the jury, 607
5. Inquest to be made and sealed by the jurors, and returned by the sheriff, 607
6. Summons to be issued to tenants and proprietors, 607
7. What proceedings to be had where the party has the fee-simple property on both sides the creek, 608
8. Court on inquest, or other evidence, may or may not give leave to build under such restrictions as they may think proper, 608
9. Party obtaining leave shall pay the value of the acre and damages, 608
10. And begin to build in one year and finish in three, exception as to infants &c. 609
11. Inquest no bar to action unless for injuries foreseen, 609
12. Millers, duty of, and penalty on, 609
13. Owner or tenant of mills not having 50 acres, shall keep no swine, 610
14. Owner or occupier of mill shall keep dam in repair over which public road passes, 610
15. Locks and slopes established, to be continued, 610
16. No person shall erect a dam, &c. without leave, penalty, 610

MOTIONS.

- See Sheriffs, Nos. 10, 41, 50, Executions, Nos. 29, 63, 98, 101.

N.

NE EXEAT.

- See Chancery.

NOTICES.

- See Index to Virginia Laws, word *Notice*.

O.

OFFICERS.

1. Must reside in their county, 167
2. Shall receive no pay by virtue of any office until acceptance by qualification, 217

3. Rooms appropriated to officers of government, 649
 4. Additional compensation to certain, 639
- OFFICERS' FEES.**
- June, 1792.*
1. All officers' fees which by the laws now in force are chargeable and receivable in tobacco, shall in future be charged in money, and collected in the currency of this state, 88
 2. Every officer, witness or other person allowed any tobacco by the existing laws, may receive one penny per pound therefor, 88
 3. Clerks and justices in taxing costs and issuing executions, shall enter the same in money, 89
 4. Clerks shall set up in the court-house and in their offices, a list of their own and sheriff's fees, under the penalty of five pounds for every two succeeding days, or two succeeding courts, that it shall not be there, 89
 5. Such parts of the act regulating officer's fees as are not contrary to this, revived—all acts contrary, repealed, *November, 1792.* 89
 6. The fee-bill of 1745, revived as far as relates to sheriffs, 155
 7. The tobacco therein mentioned, to be discharged at the rate of a penny half-penny per pound, 155
 8. The sheriff shall charge no fees on an indictment not found, or where the prosecuted is acquitted, but may where he is found guilty, 155
 9. The fee-bill of 1745, revived as far as relates to coroner's fees, to be paid in specie or transfer tobacco, at one penny half penny per pound, at the option of the party, 167
- P.**
- PARTITIONS, &c.**
1. Joint tenants and tenants in common, how to make partition, 510
 2. No survivorship between joint tenants, 510
 3. Partition of several parcels may be made by one writ, 510
 4. No plea in abatement to be received in partition, 511
 5. Proceedings in partition, 512
 6. Judgment how to be executed, 512
 7. Tenants under whom, and how to hold after partition, 512
- PEOPLE.**
- As for taking the sense of, 695
- PERSONS OF UNSOUND MIND.**
- 7 To be put in charge of committees appointed by a court of chancery, 191
2. And supported out of their own estate, if sufficient, 191
 3. But if insufficient, the committee may draw a reasonable sum out of the public treasury, upon the order of the court, 191
- PLATS AND CERTIFICATES.**
1. Further time given to make surveys and return plats and certificates, 115
 2. Extended, 173, 235 & 288
- PLEADING.**
- See civil proceedings, Nos. 49 &c. and chancery, Nos. 44 &c.
- POOR.**
- Laws concerning, repealed, and new provisions made, 191
- PRINTER, PUBLIC.**
- To remove to Frankfort, 211
- How appointed, 271
- PROCESSIONING LANDS.**
1. Proceedings to perpetuate testimony as to improvements, special calls, &c. 554
 2. Commissioners to be appointed, 554
 3. Their power and duty, 554
 4. Persons having adverse claims, may cross-examine the witnesses, and invalidate their testimony, 554
 5. Witnesses may be examined in the same manner to disprove facts before sworn to, 554
 6. Depositions to be considered as taken *de bene esse* only, 555
 7. Disinterested persons to attend, 555
 8. Commissioners may re-mark the lines, 555
 9. Notice how to be given, 555
 10. Clerk, his fee, 556
 11. Commissioners, their fees, 556
 12. Witnesses, their fees, 556
 13. Proceffioners to be appointed, their duty and allowance, 556
- Q.**
- QUARTER SESSIONS.**
- See courts.
- R.**
- RECORDS OF SUPREME COURT.**
- Removal of, 161 & 162
- REGISTER.**
- See land-office.
- RELINQUISHMENT OF LAND TITLES.**
- November, 1794.*
1. Any person may disclaim title to the whole or any part of a tract of land, in the surveyor's office of the county where the whole or greatest part of it lies, 222
 2. Each surveyor shall keep a book for that purpose, 222

3. Each entry of disclaimer shall describe the situation and boundary of the land disclaimed with certainty, and be signed by the party in the presence of the surveyor, who shall attest the same, 222
4. Such disclaimer shall vest in the commonwealth all the interest of the party, and he shall never reclaim it, 223
5. Such disclaimer shall not affect the interest of any claimant under an adverse entry, 223
- REPLEVIN BONDS.
- See executions.
- REPLEVY BONDS.
- Proceedings relative thereto, 190
- REVENUE.
- See the preface to chap. X, p. 63, where the several revenue laws are referred to. *Not much of the revenue laws contained in this volume are now in force, on which account a detail is deemed improper.*
- ROADS, PUBLIC.
1. On application for a road county court shall appoint viewers, 633
2. Their duty, 633
3. Summoned to issue to the proprietors of the ground, 633
4. Writ of *ad quod damnum*, proceedings on, 633
5. On return of which court shall determine whether the road shall be opened, 634
6. If opened shall levy the damages on the county, 634
7. Surveyors of roads to be appointed and their duty, 634
8. Who bound to work on the roads, 634
9. Penalty for failing and how recovered, 634
10. Clerk shall deliver to the sheriffs and sheriff to surveyor, a copy of the order appointing him under penalty, 635
11. Shall fix up in the court house a list of surveyors, 635
12. Surveyors shall keep the roads in repair, set up interdictions at cross roads, and make and repair bridges and causeways, 635
13. Materials how to be had, 636
14. May impress waggons, 636
15. How to be paid for, as also materials, 636
16. Court may contract for building bridges and causeways, 636
17. Two counties shall join in certain cases, 636
18. Undertaker to give bond, 637
19. Contracts of county courts shall bind them and their successors, 637
20. Proceedings where a bridge is necessary between two counties, 637
21. Felling trees in a public road a nuisance, 638
22. Penalty, 638
23. Owners of dam over which a public road passes to keep it repair, 638
24. And bridges over pier-heads, 638
25. Under penalties, 638
26. Penalties how to be disposed of, 638
27. How a surveyor or other delinquent may be prosecuted where a road, bridge, &c. is out of repair, 638
28. Prosecutions under this act when to be commenced, 639
- ROADS, PARTICULAR.
- See table of local acts.
- S.
- SALARIES.
- Of officers, 171
- SEAL, STATE, 136
- SELLING LANDS BY *fi. fa.*
- November 1792.*
1. Lands, tenements and hereditaments may be sold by *fi. fa.* in satisfaction of all judgments, 128
- [*Not for debts contracted before the passage of this act, by an act of 1793 & 1797.*]
2. The clerk shall issue a *fi. fa.* against the estate, instead of the goods and chattels of a debtor, 128
3. By virtue of this the officer may levy on lands, if goods, chattels or slaves cannot be found sufficient to satisfy the execution, 128-9
4. Every writ of *fi. fa.* shall bind the property of lands from the time it shall be delivered to the officer, 129
5. The officer shall endorse thereon the day and time of day when he received it, 129
6. When the goods are not sufficient to satisfy an execution, the sheriff or other officer shall give notice at the court house on the next court day, & notice to the owner or agent, of the time and place of sale, 129
7. Such sale shall not be more than 20, nor less than ten days from the time when notice was first given, 129
8. Shall be on the premises if in a settled part of the country, if not, in such settled part as the owner shall in writing direct, 129
9. If the owner fails to point out a place the officer shall sell at the court-house, 129

10. If the defendant has several parcels of land lying in the same county, he may at any time before the day of sale, direct the sheriff in writing, out of which the judgment shall be made, 129
11. If the parcels lie in different counties the defendant may by writing request the clerk to direct the *fi. fa.* to the sheriff of any county which he shall name, 129
12. In such case the defendant or his agent, must make affidavit that he has land in the county so named, before the writ is delivered to the sheriff, 129
13. If the debt be made of any other parcel of land, or of land lying in any other county than is mentioned in such written requisition, the sale shall be void, 129
14. If the owner shall not satisfy the execution before the day of sale, the officer shall sell such estate as he has in such land, or so much thereof as will satisfy the debt, 130
15. The land thus sold shall be laid off into one or more entire parcels as the owner shall direct, and shall be sold for ready money or tobacco, as the demand may be, 130
16. But if it will not sell for three-fourths of its value, in the opinion of the commissioners appointed under the act of 1787, the defendants or any of them may enter into bond to pay the judgment in 3 months, 130
17. The security in such bond must be approved by the commissioners, 130
18. On such bond being given, the sheriff shall restore to the debtor the estate so taken, 130
19. When no such bond with security shall be offered, and the estate cannot be sold for three fourths of its value, in the opinion of the commissioners, the officer shall sell it on a credit of 3 months, 130
20. On such sale, bond with security shall be taken from the buyer, (1797) } 130
21. On a sale of lands under this act by a principal sheriff, neither he nor his deputy shall bid, 130
22. On a sale by a deputy, neither he nor his principal shall bid, 130
23. If in either case they do, the property shall not be changed, but the land may be recovered by the former owner or subjected to the demands of his creditors. 130
24. Provided that it shall not before suit brought for that purpose have been sold for a valuable consideration to a purchaser who had no notice that it was so bought, 130
25. In all sales made under this act, the sheriff shall convey the lands to the purchaser by deed, indented, sealed, and recorded as in other cases, 130-1
26. Such deed shall recite the execution, purchase and consideration, and shall be effectual to pass all the interest which the debtor had and might lawfully part with in the lands, 131
27. All bonds taken pursuant to this act shall mention the occasion of their being taken, shall have the force of judgments, and be assignable, 131
28. The sheriff shall return such bonds to the clerk's office or deliver them to the creditors or their attorneys, 131
29. If they be not discharged, such creditors or their assignees may on affidavit of that fact, issue execution for as much as by the affidavit shall appear to be due, 131
30. On such execution the clerk shall endorse that no security of any kind is to be taken, 131
31. The sheriff shall levy such execution immediately, selling first the estate of the principal obligor, if any can be had, 131
32. If on the return of such execution the debtor can prove payment to the assignee, obligee or attorney before notice of assignment, the court may quash such execution or give such other judgment as shall seem right, 131
33. The person in whose name such execution issued, shall nevertheless be liable to the action of the debtor for damages, 131
34. Execution may be issued by the assignees against the assignor if from the sheriff's return on the execution against the obligors, it appears that there was not sufficient estate to make the debt, 131
35. Such execution shall be for whatever balance may be due and proceeded on as executions against the obligor, 132
36. If the sheriff fails to return any bond taken under this act in thirty days, he shall be liable as for failing to return an execution, 132
37. A widow's right to dower shall not be affected by any sale under this act, February, 1797. 132
38. The court of quarter sessions shall appoint five commissioners, whose

- duty it shall be when called on by the sheriff to value land taken in execution, 670
39. Any three of them shall be sufficient, and the land shall not be sold for less than three-fourths of what they value it at, 670
40. Lands shall not be taken in execution for debt or damages, if there be slaves or personal property sufficient to satisfy the debt, 670
41. If any defendant shall request that his lands be taken in preference to his personal property and satisfies the sheriff of his right to it, and shews the land to the sheriff and commissioners, he shall take the land, 670
42. Bonds taken by virtue of this act, shall be returned to the clerk's office as forthcoming bonds, shall have the force and be proceeded on as replevin bonds, 670
43. If the sheriff can find no other property, he may levy the execution on any lands he can find, have them valued and proceed as herein before directed, 671
44. On bonds for the forthcoming of property not complied with, the sheriff shall return the truth of the case, and execution may issue without notice or motion, 671
45. On such execution the clerk shall endorse that "No security is to be taken," and the sheriff shall proceed to levy it as other executions of the like kind, 671
- SESSIONS OF GENERAL ASSEMBLY.**
- An act altering commencement of, 673
- SET-OFF.**
- See Justices, No. 7—Courts of Quarter Session, Nos. 29 & 55.
- SETTLERS.**
- Session of 1795.*
1. Who entitled to settlements, 350
2. Salt licks and ore reserved, 350
3. Commissioners appointed to adjust claims, 350
4. To hold their courts in Logan and Green, 350
5. Witnesses to appear in support of claims, 350
6. Claims allowed, to be specially located, 350
7. Surveyor's duty relative to entry, &c. 350-1
8. The commissioners may compel witnesses to attend, 351
9. Sheriff of Logan and Green, respectively to attend the commissioners, 351
10. Their decision to be final, 351
11. First improvement to have the preference, 351
12. No person shall obtain a certificate for more than one improvement, 351
13. Proportion of survey, 351
14. Limitation for surveying, and returning plats, &c. 351
15. Claimants to pay 30 dollars per 100 acres, 351
16. Forfeiture for not returning survey to the register's office, 352
17. Commissioners to sign their proceedings and lodge a copy with the register, 352
18. May award costs on a decision, 352
19. Prohibition as to settling on unappropriated land, 352
- February 1797.*
20. Who entitled to settlement under this act, 682
21. Lands reserved, 683
22. Commissioners appointed to adjust claims, 683-4
23. Their jurisdiction and powers, 684
24. Those who hold settlement rights under the act of 1795, cannot hold under this, 686
25. Clerk's duty, 684
26. Commissioners to sign certificates granted, 684
27. Attested copies from their books to be admitted as evidence, 684
28. Clerk's and sheriff's fees, 685
29. Persons holding land under this act, to lay their claims before the commissioners, 686
30. Claims to be surveyed in a square, 686
31. Price of land—first rate, 60 dollars—second rate, 40 dollars, 683
32. On failure of payment for twelve months, land to be forfeited, 683
33. Conditions on which a grant shall issue, 683
34. Surveyor's duty, 683
35. Surveyors of military lands, their duty, 685
36. Without actual residence, land to be forfeited, 686
37. Further time allowed settlers under the act of 1795, 686
38. Their claims protected, 686
39. Salt licks and springs with 1000 acres around each, reserved, [repealed] 686
40. Locations on military lands by mistake, may be removed, 686-7

41. The governor to have this act published, 687
- SHERIFFS.**
- June, 1792:*
1. The governor may make a temporary appointment, where a county fails to elect a sheriff, or one dies, (1796) 81
 2. May, with the consent of the senate, appoint sheriffs for new counties, to continue in office until the next election. (1796) 81-2
 3. A person elected or appointed sheriff and refusing to accept the office, forfeits 60 dollars, to the use of the county, (1796) 82
 4. Judgment for this penalty may be entered by the court, on the party refusing in court to accept, (1796) 82
 5. Otherwise may be recovered by information, (1796) 82
 6. May be released from the penalty and office, on making oath he cannot obtain security, having used his best endeavours to do it, 82
 7. Shall enter into one bond in the penalty of 3000 dollars, payable to the governor for the discharge of the general duties of his office, (1796) 82
 8. Shall enter into another in the penalty of double the amount of the taxes to be levied in his county for that year, conditioned for collecting and paying over taxes, fines, &c. (1796) 83
 9. Any person injured by a breach of either of these bonds, may sue on them at his own costs and be liable to costs if cast, (1796) 83
 10. The public treasurer, other public and county creditors may prosecute on these bonds by motion, with notice in the court [District court, 1796] of oyer and terminer or the county court, (1796) 83
 11. Sheriff and under sheriff to take oath before he enters on his office, (1796) 83
 12. Sheriff shall not return that the defendant is not found in his bailiwick, unless he or his deputy has been at his house and not found him, and left there a true copy of the process, or his residence is unknown to such officer, (1796) 84
 13. If defendant cannot be arrested and is a known inhabitant of another county, the officer shall return the truth of the case, and the process shall abate, (1796) 84
 14. When an under sheriff shall have served a writ of execution or other process, he shall return thereon the time of service, under the penalty of forty dollars, 84
 15. Shall subscribe his own name as well as that of his principal to his return, 84
 16. No officer shall execute process on Sunday, except for felony, breach of the peace or escape, (1796) 84
 17. Sheriff allowed 6 per cent. for collecting and paying public and county tax, (1796) 84
 18. May distrain (for taxes or levies not paid within the time limited by law) goods found on the land where the debtor lives, notwithstanding the goods are comprized in a deed or mortgage, and may sell them as in other cases of distress, (1796) 84
 19. Shall not seize slaves on that or any other occasion where other goods can be had, (1796) 84
 20. Shall not make unreasonable distresses under penalty of answering in damages and costs, (1796) 84
 21. Shall collect and distrain for arrearages of taxes left uncollected by his predecessor, and account for them as if the same became due in his time, (1796) 84
 22. Every contract made between a sheriff and a person in his custody, shall be void, 84
 23. Except bonds prescribed by law, and for money or tobacco actually advanced by the sheriff to relieve the other from imprisonment, (1796) 84
 24. The old sheriff may be discharged and the new one charged by delivering the prisoners by indenture, or by an entry of their names and the causes of their commitment on the records of the court, (1796) 86
 25. Where a deputy sheriff shall have rendered his principal liable on motion, either the creditor or sheriff may obtain judgment against him, his securities, their executors or administrators, (1796) 86
 26. When a sheriff tenders tobacco as having been collected for fees, he shall make oath that it was paid by the person charged with the fees, and that he hath not directly or indirectly procured it by other means, (1796) 87
 27. When a sheriff shall reside out of the county for which he was appointed, 87
- November, 1792.*
4. X

- ed, the office shall be considered vacant, and be immediately filled according to constitution and law, { 155
—(1796) } 582
- Session of 1794:*
28. All sheriffs and their deputies shall continue in office as collectors until they have completed the collection of all taxes and arrearages which became due in their time, (1796) { 248
} 582
29. Sheriffs appointed to fill a vacancy occasioned by death or resignation, shall continue in office until they have completed the collection of taxes and arrearages which became due in the time of their predecessor, (1796) { 248
} 582
30. Sheriffs continued in office for the purpose of collections, may make distresses as other sheriffs may, (1796) { 249
} 582
31. May distrain for fees and collect them, shall be subject to the same proceedings by the auditor and the proprietors of fee-bills, as other sheriffs are subject to, { 249
} 582
32. Neither sheriffs nor deputies shall continue as collectors more than 3 years from the expiration of the time for which they were appointed, { 249
—(1796) } 583
33. No person chosen or appointed sheriff, shall be eligible to that office in any county for the term of six years from the date of his appointment, { 249
—(1796) } 583
34. On the death or absence of a delinquent sheriff or collector, ten days notice to the securities or the legal representatives of the absentee, or either of them, shall be sufficient to authorize a judgment, 249
- Session of 1795.*
35. No sheriff shall be eligible to either branch of the legislature until one year after he has obtained a *quictus*, { 286
—(1796) } 583
36. Every sheriff shall give notice to some justice of the peace of all vagrants in his county which may come to his knowledge, 291
- Session of 1796.*
37. The sheriff or collector shall, before distress, tender to the person of whom he demands taxes, levies or fees, a receipt expressing distinctly every article of the demand, 586
38. Unless such person resides out of the county or cannot be found, 586
39. Officers holding up executions on behalf of the commonwealth longer than one month after the return day, shall forfeit 15 per cent. 586
40. Making a false return on such execution, shall forfeit and pay 25 per cent. 586
41. Returning such execution in such manner as to entitle the debtor to a credit, and not paying into the treasury the money within one month after the return day, shall forfeit double damages and double interest, 586
42. The attorney-general may direct subsequent executions on behalf of the commonwealth to him who was high sheriff when the first was levied, notwithstanding his term has expired, 587
43. A deputy sheriff levying an execution on behalf of the commonwealth, shall sign his principal's name to his return in addition to his own, under such penalty as is inflicted for withholding an execution, 587
44. Performing the duties after notice given of an intended motion, shall not bar a recovery of fines or forfeitures, 587
45. Any person attempting to injure or interrupt a sale of the estate of a public debtor by any fraudulent execution, conveyance or incumbrance, shall forfeit to the commonwealth 100*l*. 588
46. Clerks to deliver fee-bills to sheriffs before the first of March annually, 588
47. May be distrained for after the 10th of April, 588
48. Surveyor's fees shall be put into the sheriff's hands before the 20th of January, and may be distrained for after the 10th day of April, 588.9
49. Sheriffs may, after the 10th day of April, distrain for their own fees, or for the fees of other sheriffs put into their hands to collect, 589
50. Sheriffs accountable on the last day of May for clerk's, surveyor's and sheriff's fees, [*altered*] 589
51. Liable therefor on motion in the district or quarter session courts, 590
- SLAVES;
November, 1792.
- Trial of, 157 & 158
[*Superseded by subsequent acts.*]
- Dealing with slaves, act preventing, 120
[*Superseded by subsequent acts.*]
- Session of 1794:*
1. All laws heretofore in force respecting the importation of slaves, repealed, 246

2. No slave to be imported into this state from any foreign country, 246
 3. Slaves imported from a foreign country into the U. S. since January 1st, 1789, or who may be imported, shall not be imported into this commonwealth, under the penalty of 300 dollars, 246
 4. No slave shall be imported into this state as merchandize, under the penalty of 300 dollars, recoverable in debt *qui tam* for each slave, 246
 5. This act shall not prevent a citizen of this state from bringing for his own use slaves not imported into the U. S. since January 1st, 1789, 246
 6. Nor shall it prevent persons emigrating to this state, from bringing with them slaves not prohibited by this act, 246
 7. Any person may by last will or testament, emancipate a slave, 246
 8. Or by instrument in writing signed, sealed, attested, and proved by two witnesses in the county court of the county where he resides, 246
 9. A slave thus emancipated shall be discharged from any contract made during servitude, and be as free as if born free, 246
 10. The court may demand bond and security from the emancipator for the maintenance of slaves which are infirm in body or mind, 247
 11. Every emancipated slave shall have a certificate of his freedom made out on parchment, under the seal of the county, 247
 12. All rights are saved except those of the emancipator and his heirs and legal representatives, 247
- SOUTH & STONER'S FORK,**
Navigation of, 192
- STRAYS,**
General act concerning, 250
Amended, 284
- STATE BOUNDARY,**
STATE HOUSE.
Keeper thereof to be appointed, 650
His duty, 650
- SUFFRAGE,**
Certain persons excluded from, 182
- SURVEYS.**
See plats and certificates.
- SURVEYORS.**
June, 1792.
1. A surveyor to be appointed in each county and to reside within his county, 61
This act was temporary and has expired.
2. The governor to continue by commission, the surveyors of the lands reserved for the officers and soldiers of the Virginia state and continental lines, 89
November, 1792.
3. Surveyors entering or suffering to be entered any lands, or receiving or issuing plats and certificates of survey on an entry made since May 1st, 1792, liable to a fine of 200*l.* recoverable by the auditor on motion, 165
4. Every surveyor shall certify on the plat and certificate of survey, the date of the entry on which it was made, 165
5. Governor to appoint persons to examine the surveyor's office for the Virginia state and continental lines, 166
SURVEYOR'S FEES.
See sheriff, Nos. 48-50.
- T.**
TAVERNS:
1. Must be licenced by the county court, 194
2. Not to be granted to a person of bad character, or who keeps a disorderly house, 194
3. Bond to be taken, 194
4. County court to affix rates at least twice a year, 195
5. Penalty for failure, 195
6. Penalty on tavern-keeper for not setting up rates in his public room, 195
7. How penalties to be recovered and appropriated, 195
8. Penalties for selling liquors without licences, 196
9. Justices to put this act in execution, 196
10. To be given in charge to grand juries, 196
11. Suits and presentments for a breach thereof to be tried in a summary way, 196
12. Disqualification, 196
13. Tavern improperly kept, may be suppressed by two justices till next court, 197
14. Store-keepers and farmers may sell liquor by the quart, under certain conditions, 197
15. Fines to be collected by the sheriff, 197
16. Any justice of the peace may assess a fine under this act, and pay it to the sheriff, 197
17. Clerk to lay a list of fines imposed before the court, 197
18. County court to hear appeals of persons aggrieved, 197
- TITHABLES.**
1. Act concerning, and the mode of collecting the county levy, 678
2. Who shall be deemed a tithable, 678
3. Commissioners of the tax to take lists of tithables, 678

4. To be entered with the clerk of the court in certain cases, 678
 5. Matters &c. to make out lists of tithables, and deliver them to the commissioners, 679
 6. Penalty for failure therein, 679
 7. Penalty on commissioner of tax not listing his tithables, 679
 8. At what court the justices shall settle their county charges and expences and lay the levy, 679
 9. Clerks shall deliver to sheriff list of persons chargeable with levies, 680
 10. How county creditors may recover the sum due to them from the sheriff, and when, 680
 11. County court may give judgment against sheriff failing to account, 680
 12. Court may appoint any person collector &c., 681
 13. Penalty on clerk failing to deliver lists, &c., 681
 14. Collector may appoint a deputy, 681
 15. Remedy against him, 681
- TITLE PAPERS.**
- Edmund Thomas directed to procure from the register's office in Virginia, the original title papers to land in this state, remaining therein, 652
- Appropriation therefor, in part, 652
- TOBACCO.**
- See officers' fees.
- TOWNS.**
- General law concerning, 512
1. County courts authorized to establish towns, 512
 2. To appoint trustees and fix the name, 513
 3. Duty and power of the trustees, 513
 4. When and how to be elected, 514
 5. Persons applying to give bond, 514
 6. How additions may be made to towns, 514
 7. Court to appoint trustees in certain cases, 515
 8. Clerk's fee, 515
 9. Further time to improve lots, 515
 10. Trustees of towns heretofore established, how to be elected, and their powers, 625
- TOWNS, PARTICULAR.**
- See table of local acts.
- TREASURER.**
1. To give bond and security to the governor, 78
 2. His oath of office, 78
 3. His duties, 79, 80 & 265
 4. Penalty for misapplying public money, 80
 5. His office to be provided with a chest, presses, books, &c. at the public expence, 80 & 265
 6. When necessary, shall be allowed a clerk, 80
- VAGRANTS.**
1. Described, 288
 2. How apprehended, and proceedings thereon, 289
 3. To be hired to the highest bidder, 289
 4. If not hired, to be whipped, 290
 5. Money for hire, how applied, 290
 6. Sheriff's and constable's fees, 291
 7. Penalty for employing a tithable more than two days, who removes from another county without a certificate, 291
 8. Duty of justices and sheriffs, 291
 9. Grand juries to present vagrants, 291
 10. Proceedings thereon, 292
 11. Gaming tables shall be destroyed by order of a justice of the peace, 292
- WATER COURSES.**
- Obstructions in, an act respecting, 121
- See also mills.
- WILLS.**
1. Who may devise by wills and in what manner, 611
 2. Devise, how revocable, 611
 3. Will made when the testator had no child, if he die leaving a child, or leaving his wife *enfeint*, 612
 4. Provision in favor of posthumous child or children, 612
 5. No person under 18 to dispose of chattels by will, 612
 6. Nuncupative will when good, 612
 7. What proof sufficient after six months from the time of speaking the words, 612
 8. Will of chattels in writing how revocable, 613
 9. Exception as to soldiers and sailors, 613
 10. Devise to a witness whose testimony is necessary to prove the will, void, 613
 11. County courts to have cognizance of causes testamentary under certain rules, 613
 12. How the validity of a will may be contested, 613
 13. How the attestation of a witness residing out of the state may be taken, 614
 14. How authenticated copies of wills may be admitted to probate, 614
 15. Court may grant probate to executors, or certificate to administrators in the same manner as if the original of such will had been proved in court, 614
 16. Certificate of the oaths of the witnesses at the time of the first probate admitted to the jury, 615
 17. Nuncupative will, when to be proved, 615

- | | | | |
|---|-----|--|-----|
| 18. Court may compel a person having a will in his custody, to produce it, | 615 | 46. Appraisement &c. how far evidence for or against an executor, | 621 |
| 19. If the executors refuse, an administrator to be appointed, with the will annexed, | 615 | 47. Appraiser's fee, | 621 |
| 20. Executor or administrator to take an oath, | 615 | 48. Executor's duty in making sale of personal estate, | 621 |
| 21. The form of it, | 615 | 49. Estate not to be appraised if testator so directs, | 621 |
| 22. And to give bond, &c. | 615 | 50. Dead victuals and liquors to remain for the use of the family | 622 |
| 23. How the bond is to be recovered on, | 616 | 51. Live stock may be killed for family use, | 622 |
| 24. No security to be required from executors, if so ordered by the will, except, &c. | 616 | 52. Executors to sell lands devised to be sold, | 622 |
| 25. Powers of executors before probate, | 616 | 53. How long the slaves of a person dying after the first day of March employed in making a crop, shall be continued on the plantation, | 622 |
| 26. Court in certain cases to appoint persons to collect and preserve the estate before probate, | 616 | 54. Emblements when to be assets, & when not, | 622 |
| 27. In what manner, and within what time a widow may renounce the provision made for her by will, | 617 | 55. Lessee of tenant for life, tenant for life dying after the first day of March, shall hold land and slaves until the last of December, | 623 |
| 28. In which case she shall be entitled to dower, | 617 | 56. Rent of land, &c. becoming due after the death of tenant for life, &c. to be apportioned between his executors and the reversioner, | 623 |
| 29. Penalty on widows removing out of the state any slave being of her dower, without the consent of him or her in reversion, | 617 | 57. Appointment of a debtor executor no extinguishment of the debt, | 623 |
| 30. And on the husband of such widow removing any such slaves aforesaid, | 617 | 58. At what time and upon what terms distribution to be made of intestate's estate, | 623 |
| 31. All original wills to be recorded, and to remain in the office, | 618 | 59. Executors, allowance to, | 623 |
| 32. How distribution is to be made of the personal estate of an intestate, | 618 | 60. Executors of guardians, committee of an infant, &c. how they shall pay debts, | 623 |
| 33. Husband not compelled to distribute his wife's estate, | 618 | 61. Tenant <i>per autre vie</i> dying, may devise the residue of the term, | 624 |
| 34. A child who has been advanced, must bring such advancement into hotchpot, | 618 | 62. If there be no devisee, to whom it shall pass, | 624 |
| 35. Jurisdiction of the courts in hearing and determining rights of administration, | 618 | 63. For what executors &c. may sue or be sued, | 624 |
| 36. Order to be observed in granting, | 618 | 64. Trespass will lie for goods taken in the time of the testator or intestate by or against executors or administrators, | 624 |
| 37. If no person applies within 30 days, court may grant administration to creditors, | 618 | 65. Executors of executors, power and duty of, | 624 |
| 38. Administrator to take oath, | 618 | 66. If executors refuse, &c. and no person apply for administration in three months, court may appoint sheriff to take charge of the estate, | 624 |
| 39. Form of the oath, | 619 | 67. Duty of sheriff in such cases, | 625 |
| 40. And give bond, &c. | 619 | 68. Former sales by sheriff under order of court, confirmed, | 625 |
| 41. Security of executors, how far chargeable, | 620 | | |
| 42. Justices liable if they take insufficient security, | 620 | | |
| 43. Security of executors in danger of suffering, how to be relieved, | 620 | | |
| 44. Clerk's certificate of probate, &c. good evidence of executorship, | 620 | | |
| 45. Court to appoint appraisers, who shall appraise the personal estate and return their appraisement to court, | 620 | | |

WITNESSES.

Session of 1795.

1. In all cases where witnesses are required [in the district court] the clerk shall issue a summons expressing

- the day and place of appearance, the parties to the suit, and in whole or half summoned, 309
2. When a witness shall be about to depart the state, or by age, sickness or otherwise unable to attend, his deposition may be taken *de bene esse*, 309
3. A commission for taking such deposition shall be issued by the clerk, on affidavit made to the above facts, or some of them, and filed with the clerk, 309
4. Reasonable notice shall be given to the adverse party of the time and place of taking such depositions, 309
5. On affidavit that a witness resides beyond sea in a foreign country, or any of the United States, [other than this] a commission may be awarded by the court to take his deposition, 309
6. Such commission shall be directed to such persons not exceeding five as shall be nominated by the parties litigant, 309
7. The person applying for such commission shall give the adverse party ten days notice of the application, [repealed] 309
8. If the adverse party does not attend, the person applying for the commission may make the nomination, 309
9. Any three of the commissioners appointed may execute the commission, 310
10. If any party in a suit at common law shall make oath that he believes his claim or defence depends on a single witness, the court, or the clerk in vacation, may award a commission to take his deposition *de bene esse*, 310
11. Any person summoned before the court or commissioners, and refusing to give evidence on oath or affirmation, shall be committed to prison by the court or commissioners, to remain without bail or mainprize until he will give evidence, 310
12. Any person summoned and failing to attend, not having a reasonable excuse, shall be fined by the court not exceeding 3*l*. and be liable to the suit of the party injured, 310
13. There shall not be allowed in the bill of costs a charge for more than three witnesses to the proof of any one fact, 310
- WOLVES.
- An act concerning the killing of, 336
[Repealed, Feb. 1, 1809.]

INDEX TO THE ACTS OF VIRGINIA,

CONTAINED IN THE PRÆLECTIONS.

A.		E.	
ACTS OF ASSEMBLY, to commence from their passage, 1785, . . .	385	ENTRIES IN KENTUCKY, an act for the preservation of, 1787, . . .	452
To commence from the 10th of March, 1789, . . .	385	EXECUTIONS, various acts respecting, . . .	528 to 535
Questions respecting repeal of, how determined, 1789, . . .	385-6	F.	
ATTORNEYS, liable on information to have their licences suspended or vacated for mal-practice, 1786, . . .	365	FINCASTLE COUNTY, residents of, had an equitable interest in their lands, 1775, . . .	
B.		FELONIES, committed out of the commonwealth, where to be tried, 1786, . . .	
BAIL, special, when and how demandable, 1748, . . .	481	G.	
Recognizance of, form, 1761, . . .	482	GUARDIANS, 1705, . . .	
BEHAVIOUR, who may be bound to, 1789, . . .	466	May leave the lands of their wards, 1785, . . .	
BRITISH SUBJECTS, conveyances of, void, 1782, . . .	436	I.	
C.		INDIANS, the commonwealth has the exclusive right of purchasing lands from them, 1776, 390—1779, . . .	
CHANCERY, trials in, how to be had, 1783, . . .	520	J.	
Court of, to appoint a commissioner, 1788, . . .	520	JEOPAILS, in civil cases, a number of statutes respecting, . . .	
His compensation, and how paid, 1789, . . .	521	In prosecutions, acts concerning, 1748 & 1786, . . .	
CONVEYANCES, several acts respecting them, . . .	565 to 567	L.	
COURT, GENERAL, Proceedings in, suspended, 1781, . . .	429	LANDS, north west of the Ohio, to be conveyed to the United States, 1783, . . .	
Suspension removed, 1781, . . .	432	See military lands.	
Have a discretion as to costs on motions, 1783, . . .	485	LAWS, what shall be in force in Virginia, 1776, . . .	
D.		The repeal of a repealing law shall not revive the former law, 1789, . . .	
DEPUTY SHERIFFS, not to continue more than two years in office, without the consent of the county court, 1772—1787, . . .	578	Laws regulating the general court and high court of chancery to regulate the supreme court of Kentucky, 1782, . . .	
DEPUTY SURVEYOR, who shall be entrusted with the office, to be appointed, 1782, . . .	439	Amplified, 1787, . . .	
DOWER, the laws of England respecting it extended to Virginia, 1705, . . .	516	M.	
DUCKING, a punishment for slander, 1662, [Repealed.] . . .	373	MILITARY LANDS, settlements on them prohibited, 1779, . . .	
		Various regulations respecting, 1781, . . .	
		—1783, 442—1789, . . .	
		MOTIONS, costs on, subject to the discretion of the court, 1783, . . .	

N.		
NOTICES, what shall be legal, 1783, 1787, 1788,	485	
O.		
OCCUPIERS OF LAND, to be paid for their improvements, 1661, [Repealed]	641	
OFFICES, not to be sold,	578	
P.		
PRE-EMPTION RIGHTS, origin of, 1777,	390	
PROCESS, renewal of, 1772,	432	
Q.		
QUIT RENTS, abolished, 1777,	392	
Arrears of, not due from lands on the western waters, 1777,	392	
R.		
REGISTER, deputy to be appointed, &c. 1781,	431	
Act respecting his office, 1791,	464	
S.		
SETTLEMENTS, N. W. of Ohio, prohibited, 1779,	422	
SHERIFFS, not to farm their bailiwicks,	578	
SLAVES, what persons shall be, 1753,	241	
Penalty for selling free persons as such, pecuniary by act of 1753, 241—		
death by act of 1787,	242	
Further importation of, prohibited, 1778, 241—1785, 243:		
Exceptions, 1778, 241—1785, 243.		
May be emancipated by deed or will, 1782,	242	
Rights of others saved,— <i>Ibid</i> :		
Slaves emancipated, liable to be hired out for their taxes, &c. 1782,	242	
Slaves having fled for freedom and afterwards charged with felony, shall be tried as freemen, 1786,	244	
Importation of, into the district of Kentucky, penalties thereon repealed on condition, &c. 1788,	244	
General laws relaxed as to importation of,	245-6	
SOLDIERS, their accounts to be adjusted, 1781,	432	
Funds provided for, 1782,	435	
SURVEYORS, sundry regulations respecting them, 1748,	386, 387 & 388	
Assistant not to make or take entries— <i>Ibid</i> .		
Surveyors to reside in their counties, 1763,	388	
To lay down plats by the true meridian, 1772,	389	
An act reducing into one, the several acts concerning them, 1783,	445	
Of new counties, to demand and receive papers from the surveyors of old counties, 1785,	455	
A variety of regulations respecting their fees, 1787, 458—1788, 461.		
SURVEYS, made by a surveyor who had not taken oath and given bond, void, 1748,	386	
V.		
VIRGINIA, boundaries of, 1776, 390—1791, 463.		
W.		
WITNESS, the owner of stolen goods competent in a prosecution for the theft, 1785,	464	

INDEX TO THE LOCAL MATTER.

A.

ACADEMIES.

1. Kentucky academy established, 1794, 228
2. Franklin academy established, 1795, 296

B.

- Bairdstown—see towns, No. 15.
 Beallsborough—see towns, No. 12.
 Boonsborough—see towns, No. 11.
 Bourbon—see counties, No. 6.
 Bracken—see counties, No. 24.
 Bullitt—see counties, No. 21.

C.

- Campbell—see counties, No. 20.
 Charlestown—see towns, No. 13.
 Christian—see counties, No. 22.
 Clarke—see counties, No. 15.
 Cynthiana—see towns, No. 26.

COUNTIES.

COUNTIES FORMED BY VIRGINIA.

- | | |
|---------------------|-----|
| 1. Kentucky, 1776, | 626 |
| 2. Jefferson, 1780, | 626 |
| 3. Fayette, 1780, | 626 |
| 4. Lincoln, 1780, | 626 |
| 5. Nelson, 1784, | 627 |
| 6. Bourbon, 1785, | 627 |
| 7. Mercer, 1785, | 627 |
| 8. Madison, 1785, | 627 |
| 9. Mason, 1788, | 628 |
| 10. Woodford, 1788, | 628 |

COUNTIES FORMED BY KENTUCKY.

- | | |
|-----------------------|-----|
| 11. Washington, 1792, | 629 |
| 12. Scott, 1792, | 629 |
| 13. Shelby, 1792, | 629 |
| 14. Logan, 1792, | 630 |
| 15. Clarke, 1792, | 631 |
| 16. Hardin, 1792, | 630 |
| 17. Green, 1792, | 631 |
| 18. Harrison, 1793, | 631 |
| 19. Franklin, 1794, | 632 |
| 20. Campbell, 1794, | 632 |
| 21. Bullitt, 1796, | 364 |
| 22. Christian, 1796, | 365 |
| 23. Montgomery, 1796, | 366 |
| 24. Bracken, 1796, | 366 |
| 25. Warren, 1796, | 369 |
| 26. Garrard, 1796, | 384 |

D.

- Danville—See towns No. 10.

4 Y

F.

- Falmouth—see towns, No. 27.
 Fayette—see counties, No. 3.
 Frankfort—see towns, No. 7.
 Franklin—see academies, No. 2, counties, No. 19.

G.

- Garrard—see counties, No. 26.
 Germantown—see towns, No. 36.
 Georgetown—see towns, No. 18.
 Green—see counties, No. 17.
 Greensburgh—see towns, No. 32.

H.

- Hardin—see counties, No. 16.
 Harrison—see counties, No. 18.
 Harrodsburg—see towns, No. 4.

J.

- Jefferson—see counties, No. 2, towns, 31.

K.

- Kennedyville—see towns, No. 37.
 Kentucky—see counties, No. 1, academies, No. 1.

L.

- Lewisborough—see towns, No. 35.
 Lexington—see towns, No. 3.
 Lincoln—see counties, No. 4.
 Logan—see counties, No. 14.
 Louisville—see towns, No. 2.

M.

- Madison—see counties, No. 8.
 Mason—see counties, No. 9.
 Mayville—see towns, No. 14.
 Milford—see towns, No. 16.
 Montgomery—see counties, No. 23.
 Mount Sterling—see towns, No. 21.

N.

- Nelson—see counties, No. 5.
 Newport—see towns, No. 33.
 Newton—see towns, Nos. 31 & 34.

P.

- Port-William—see towns, No. 30.
 Preston—see towns, No. 38.

R.

ROADS, PARTICULAR.

- From Frankfort to Cincinnati, 1793, 185
 From Madison court house to the Hazle-
 patch, 1794, 237

To Cumberland Gap, 1795,
—Amended 1797,

S.

Scott—see counties, No. 12.
Shelby—see counties, No. 13.
Shelbyville—see towns, No. 22.
Shepherdsville—see towns, No. 23.
Springfield—see towns, No. 25.

T.

TOWNS.

TOWNS ESTABLISHED BY VIRGINIA.

The Virginia acts establishing and regulating these towns, will be found in the appendix to the second volume. It would have been gratifying to the compiler to have inserted them in their proper places, in this; but it would have swelled the volume to an inconvenient size, and would have still more disjoined the acts of a general nature.

1. Boonsborough, established 1779,
Trustees of, directed to convey a lot,
1793, 221
Time for building prolonged, 1795, 341
2. Louisville, established, 1780,
Acts concerning, 1793, 184
—1795, 325
Papers recorded, &c. to be given up
to the acting trustees, 1797, 604
Penalty for refusal, and how to be
collected and applied, 605
County court of Jefferson may ap-
point a pilot, 605
His fee, 605
Penalty on any person acting, not
being authorized, 605
How to be collected and applied, 605
No owner of a boat compelled to
employ a pilot, 605
3. Lexington, established, 1782,
Regulated 1792, 110
Regulating act amended, 1792, 127
Better regulated 1793, 221
Better regulating act amended, 1795, 343
Act for regulating, 1796, 573
Trustees to be annually elected, 573
Who may be trustees, 574
Vacancies, how to be filled, 574
Powers of, 574
Penalty for erecting nuisances in
the said town, 575
Penalty for racing horses, 575
For shewing stud-horses, 575
How recoverable, and to be ap-
plied, 575
Swine not to be suffered to go at
large, 575

- Weights and measures, regulation
of in market, 576
Watchmen to be employed, and
their duty, 576
4. Harrodsburgh, established, 1785,
Owners of lots in, allowed further
time to improve, 1793, 184
 5. Anonymous, [now called Shipping-
port] established, 1785.
 6. Washington, established 1786.
Act concerning, 1793, 199
Shooting & racing in, prohibited, 1793, 221
Act concerning amended, 1794, 260
Another act concerning, 1797, 650
 7. Frankfort, established, 1786.
Act establishing it amended, 1794, 247
Time for electing trustees, 1797, 640
Seven trustees to be elected, by whom,
and what time, 640
Powers of, 640
Penalty on exposing articles to sale
under weight, 644
Lot to erect market house on, 640
May impose a tax, 641
Limits of the town may be enlarged, 641
Powers of the present trustees to de-
volve on their successors, 641
 8. Anonymous, [now called Standford]
established 1786.
Additional trustees appointed, 1794, 240
Shooting & racing in, prohibited, 1797, 651
 9. Anonymous, and still remains with-
out name or substance—it was direct-
ed to be built at the mouth of Dick's
river—established 1786.
 10. Danville, established 1787.
Nuisances, shooting and racing in,
prohibited, 1795, 341
 11. Warwick, established 1787.
Owners of lots in, given further time
to improve, 1793, 184
 12. Beallsborough, established 1787.
 13. Charlestown, established 1787.
 14. Maysville, established 1787.
Longer time given to improve lots in,
1793, 240
Racing and shooting in, forbidden,
1797, 651
 15. Bairdstown, established 1788.
Time given to improve lots in, 1792, 87
Shooting and racing in, prohibited,
1793, 221
Time for improving, prolonged, 1794, 240
Time prolonged again, 1796, 384
 16. Milford, established 1789.
Better regulated, 1794, 225
 17. Hopewell, [now Paris,] established
1789,

Regulations respecting, 1792,	111	begun, or name given.] established 1792.	
—1793,	188	24. Wilmington, established 1793,	175
—1794,	225	25. Springfield, established 1793,	176
—1795,	356	26. Cynthiana, established 1793,	178
Trustees to be elected, 1797,	646	27. Falmouth, established 1793,	181
Time and place of holding the elec-		28. Shepherdsville, 1793,	183
tion,	646	29. Winchester, established 1793,	187
Who may be elected,	646	30. Port-William, established 1794,	232
Vacancies how to be filled,	646	31. Newtown, [in Jefferson, now Jef-	
Trustees may impose a tax,	646	feron.] established 1794,	233
For what purposes,	646	32. Greensburgh, established 1794,	272
And make provision for collecting it,	646	33. Newport, established 1795,	280
When a trustee shall be disquali-		34. Newton, [then in Macon] esta-	
fied,	647	blished 1795,	285
Trustees, the power of,	647	35. Lewisborough, established 1795,	295
Plat of the town to be made and re-		36. Germantown, established 1795,	329
corded, and how far binding on		—1797,	653
owners of lots,	647	37. Kennedysville, established, 1795,	341
Part of a cross street to be sold to re-		38. Preston, established, 1795,	347
pair the residue, &c.	648	V.	
Stud-horses not to be shewn in the		Verfailles—see towns, No. 19.	
streets,	640	W.	
18. Georgetown, established 1790.		Warwick—see towns, No. 11.	
TOWNS ESTABLISHED BY KENTUCKY.		Washington—see counties, No. 11,	
19. Verfailles, established 1792,	62	towns, No. 6.	
Amended, 1792,	126	Williamsville—see towns, No. 20.	
20. Williamsville, established 1792,	118	Wilmington—see towns, No. 24.	
21. Mount-Sterling, established 1792,	125	Winchester—see towns, No. 29.	
22. Shelbyville, established 1792,	151	Woodford—see counties, No. 10.	
23. Anonymus; [no town has yet been			

A TABLE OF PERSONAL ACTS

CONTAINED IN THIS VOLUME.

1. Abel, Robert,	355	19. Lewis, Col.	695
2. Barnett, Joseph,	603	20. Lynch Charles,	219
3. Brands, Robertus Samuel,	603	21. May, John and Mary,	113
4. Brent, Innes B.	113—174	22. Mitchell, Joseph,	219
5. Butler, Isaac,	604	23. Montgomery, William,	358
6. Craig, Lewis,	113	24. Mofs, Frederick,	359
7. Davidson, Samuel,	259	25. Owens, Rebecca,	696
8. Downing, Rachael,	359	26. Peyton, Timothy,	114
9. Elliot, James,	272	27. Protzman, John,	356
10. Ellis, John,	695	28. Reid, Alexander,	356
11. Faris, Elijah,	354	29. Richeson, Margaret,	359
12. Fowler, John,	272	30. Shelby, Isaac,	113
13. Green, Henry,	171	31. Taylor, George,	179
14. Hale, John,	254	32. Thomas, Philemon,	113
15. Harris, William,	168	33. Todd, Robert,	114
16. Hatton, Elizabeth,	696	34. Vaughan, Ensign,	274
17. Innes, Harry,	603	35. Voris, John,	359
18. Lawrence, James,	358	36. Wherns, Henrietta,	695

A TABLE OF REFERENCE

TO CASES ADJUDICATED IN THE
COURT OF APPEALS.

II. stands for HUGHES'S REPORTS, and the figures following it the page in, which the case or the principle will be found. The cases printed in 1805, by the direction of the legislature, are referred to merely by the number of the page and by date. Cases which have never been printed are, from necessity, referred to by name and date only. In land cases, the decisions of the late supreme court are referred to, but in no other.

A.

ABATEMENT.

Robinson *vs.* Lillard's executors, 412, October, 1805.

ACCORD.

Groshon *vs.* Grant, 315, April 1803.—M^r. Donald *vs.* Patton, 351, October 1803.

ACCOUNT.

Fogg *vs.* Fogg, 78, July 1801.

ACTION.

Thruston *vs.* Sebastian, May 1794.—Craig *vs.* Trustees, &c. 181, April 1802.—Adams *vs.* Chaffin, 337, October 1803.—Littell *vs.* Nichols's administrators, October 1806.—Morrison *vs.* Winn, April 1808.—Kennedy *vs.* Terrell and Dooley, April 1808.—Trustees of Paris *vs.* Trustees of Paris, October 1808.

ADMINISTRATION AND ADMINISTRATOR.

Barnard *vs.* Clay, April 1806.—Triplett *vs.* Wells, October 1808.

ADMISSIONS OF LAW.

Morehead *vs.* Prather, 157, April 1802.—Leforce *vs.* Robinson, April 1805.—Craig *vs.* Baker, April 1808.

AGENCY.

Robinson *vs.* Morgan, April 1808.

AGGRAVATION OF DAMAGES.

Worford *vs.* Isbell, October 1808.

AGREEMENT.

Hinton's heir *vs.* Stewart's heir, H. 3.—Madison *vs.* James, H. 20.—Dryden *vs.* M^r Gee, H. 37.—Eagan *vs.* Hinch, &c. M. 48.—Crow's heirs *vs.* Brown, 119, October 1801.

ALIENS.

Hunt and *alibi* *vs.* Warnick's heirs, April 1806.

AMENDMENT OF ENTRIES.

Isaac *vs.* Willis, H. 13.

AMENDMENT OF RECORDS.

Adams *vs.* Colhoon, May 1800.—Pemberton *vs.* Scarce, April 1805.—Ward and Kenton *vs.* Lee, assignee of Young, October 1808.

ANSWER IN CHANCERY.

Robinson *vs.* Gordon's heirs, May 1800.—Winters *vs.* January, May 1800.—M^r. Connell's heirs *vs.* Daniel, 370, April 1804.—Bright *vs.* Haggin, April 1808.—Ballenger *vs.* Worley, October 1808.

APPEAL.

Craddock *vs.* Croghan, 119, November 1801.—Smart *vs.* Cleft, 389, May 1804.—Barr and Yeiser *vs.* Stephens, October 1808.

APPEAL BOND.

Anonymous, October 1807.—Hardin *vs.* Owings, October 1808.

APPEARANCE.

Chinoith *vs.* Denny, October 1799.—Pryor *vs.* Reddick, October 1805.—Thomas and Pattie *vs.* Morford, October 1808.

APPROPRIATION.

Superintendants *vs.* Clarke, H. 39, October 1793.—Patterson's devisees *vs.* Bradford, April 1807.

ARBITRATION.

Blunt and *ux.* *vs.* Sprowle and *ux.* May 1803.—Myers *vs.* M^r Cullough, April 1808.

ASSIGNEE OF A CLAIM TO LAND.
Ward *vs.* Fox's heirs, &c. H. 214, April 1801, S. C. 10 page of cases printed in 1805.

ASSIGNEE OF NOTES, &c.

Hamond *vs.* M^r Cullom, October 1793.—*Smith* *vs.* M^r Connell, 152, April 1801.

Henderson *vs.* Morrison, 213, October 1802.—Crift *vs.* Caldwell, 350, October 1803.—Piles *vs.* Shannon, April 1805, April 1806. See assignment of notes.

ASSIGNMENT OF PLATS AND CERTIFICATES.

Steel *vs.* Mitchell, 50, July 1801.

ASSIGNMENT OF NOTES, &c.

Shult *vs.* Travis, 165, May 1802.—Pigman *vs.* Ward, 361, April 1804.—Lynch *vs.* Barr, 198, June 1802.—Tunstall *vs.* Barbour, April 1805.—Conn *vs.* Jones, April 1805.—Littell *vs.* Hord, April 1807.—Stockton *vs.* Hall, October 1807.—Drake *vs.* Johnson, April 1808.—Hubble *vs.* Mullanphy, April 1808.—Neyfong *vs.* Willis, April 1808.—M'Kinney *vs.* M'Connell, October 1808.

ASSIGNMENT OF BREACHES.

Dougherty *vs.* Glenn, April 1808, and Morrow *vs.* M'Kinney, same term. See pleading and practice.

ASSIGNMENT OF ERRORS.

Latham *vs.* Prather and Smiley, 144, April 1802.—Morehead *vs.* Prather, 157, April 1802.—Meredith *vs.* Clarke, 221, October 1802.—Meaux *vs.* Rutgers, 342, October 1803.—Brown *vs.* Roland and Radcliff, 348, October 1803.—Lanfdale *vs.* Finley, October 1807.

ASSUMPSIT.

Crabtree *vs.* Pemberton, 143, April 1802.—Morton *vs.* Waldhryn, 137, April 1802.—Castleman *vs.* Yocum, 308, June 1803.

ATTACHMENT.

Lanier *vs.* Grant, May 1793.—Hopkins *vs.* Suttler, October 1796.—Woods *vs.* Noland, May 1798.—Demaree *vs.* Jackson, 68, July 1801.—M'Lorty *vs.* Davis, 69, July 1801.—Lewis *vs.* Butler, 290, May 1803.—Rees *vs.* Bishop, 347, November 1803.—Hickman *vs.* Gift, 353, November 1803.—Craig *vs.* Sabern or Savern, April 1806.—Irons *vs.* Allen, April 1806.—Ship *vs.* Davis, October 1806.—Meggs *vs.* Shaffer, October 1806.—M'Donald *vs.* Sappington, April 1807.—Stockton *vs.* Hall, October 1807.—Anderson *vs.* Morton, April 1808.—Edwards *vs.* Davis, April 1808.—Beadle *alias* Robinson *vs.* Gano, October, 1808.

ATTORNEY FOR COMMON-

WEALTH.

Mills *vs.* Pulaski Circuit Court, Oct. 1807.

AVERMENT.

Grant *vs.* Groshon—Keeton *vs.* Scantland—Herndon *vs.* Madison, and Robards *vs.* M'Bride, April 1807.

AUCTIONEER.

Morton *vs.* Waldhryn, 137, April 1802.

AWARD.

Rice or Bice *vs.* Smock, October 1798.—Edwards *vs.* Metcalfe, October 1800.—Orear *vs.* Singleton, 77, August 1801.—Shult *vs.* Travis, 163, May 1802.—Smith *vs.* Cutright, 168, May 1802.—Phillips *vs.* Travis, 202, June 1802.—Blunt and *ux.* *vs.* Sprowle and *ux.* 267, May 1803.—Saunders *vs.* Throckmorton, May 1804.—Shores *vs.* Bates, October 1806.—Fitzgerald *vs.* Fitzgerald, April 1808.—Galloway *vs.* Webb, April 1808.—Baker's heirs *vs.* Crockett, April 1808.—Hopkins and Collins *vs.* Sodowskie, October 1808.

B.

BAIL.

Roberts *vs.* Lawless, October 1800.—Latham *vs.* Prather and Smiley, 144, April 1802.—Kennedy and Adams *vs.* Ford, 154, May 1802.—Henderson *vs.* Morrison, 213, October 1802.—Worley *vs.* Taylor, 409, October 1804.—Spowle and Craig *vs.* Greenlee—Langston *vs.* Turley, and Lynch *vs.* Agun, all of October 1806.—Morton *vs.* Hierault and Pile, April 1808.—Gore *vs.* Murray, October 1808.

BAIL BOND.

Mitchell *vs.* Hughes, May 1794.—Cook *vs.* Strubbs, 43, Collett & M'Clure *vs.* Bright, 46, July 1801.—Duffin *vs.* Ware, 167, May 1802.—Woods *vs.* Kennedy, 209, October 1802.—Chambers *vs.* Query, 321, October 1803.—Kemp *vs.* Rees, 339, November 1803.—Palmer *vs.* Casey and M'Ginnis, April 1808.—Ralston *vs.* Love and Sals, April 1808.—M'Clean and Bruner *vs.* Lillard, October 1808.

BAILMENT.

Chism *vs.* Woods, April 1808.

BANK.

Gallatin *vs.* Bradford, October 1808.

BARON & FEME.

Crozier *vs.* Gano, October 1808.

BASTARDY.

Tanner *vs.* Allen, April 1806.—Dinwiddie *vs.* the commonwealth, April 1808.—Hall *vs.* the commonwealth, April 1808.

BEGINNING [of a survey.]

Johnson and *alias* *vs.* Brown and Breckenridge, 61, July 1801.—Beckley *vs.* Bryan and Ranfdale, November 1801.

BILL OF EXCEPTIONS.

Beauchamp's administrators *vs.* Mudd, October 1807; Wright *vs.* Nicholas, Oct. 1808.

BILLS OF REVIEW.

Respa's *vs.* M'Clenahan, April 1808.—Bowies *vs.* South, April 1808.

BONDS.

Steel *vs* Mitchell, 50, July 1801—Overton *vs* French, 340, November 1803—Henderson *vs* Stainton, April 1807.

BONDS, STATUTORY.

Grimes *vs* Butler, October 1808.

BONDS, FORTHCOMING.

Cleveland *vs* Barr, October 1794—Coburn *vs* Baker, October 1794—Meredith *vs* Aultin, May 1797—Johnson *vs* Francisco, October 1800—Roberts *vs* Tompkins, October 1800—Johnson *vs* Carlisle, 81, August 1801—Morehead *vs* Prather, 158, May 1802—Young *vs* M'Ctory, April 1805.

BONDS, REPLEVIN.

Craig *vs* Christian's executors, October 1793—Craig *vs* Gwins, May 1797—Delany *vs* Stevenion, 74, August 1801—Dean *vs* Dyer senior, 175, May 1802—Turley *vs* Owings, 170, May 1802—Reece *vs* Tyler, 173, May 1802—Dean *vs* Dyer junior, 211, October 1802—Ballenger *vs* Crozier, 249, April 1803; Glenn *vs* White, 249, August 1803; M'Cinnis *vs* Barnes, 293, June 1803; Meaux *vs* Rutgers, 341, November 1803; Blackburn *vs* Bilbo & *alias*, and Gano *vs* Hart, April 1808; Woodrough *vs* Perkins, and Hatcher *vs* Kelly and Brent, October 1808.

BONDS TAKEN ON SALE OF LAND BY EXECUTION.

Meaux *vs* Rutgers, 341, November 1808.

BONDS TAKEN FOR PRISON

BONDS.

Gano *vs* Briscoe, 290, May 1803; Fields *vs* Slaughter, October 1808.

BOUNDARIES.

Morrison *vs* Coghill's legatees, 383, May 1804.

C.

CAVEAT.

Williams *vs* M'Afee's heirs, 13, April 1801; Crow's heirs *vs* Harrod's heirs, April 1808.

CAVEAT EMPTOR.

Gimble *vs* Harrison, 373, May 1804.

CERTIFICATES OF PRE-EMPTION.

Kenny *vs* Whitledge, H. 124, October 1799; Bryan and Owings *vs* Wallace, 14, April 1801.

CERTIFICATES OF COMMISSIONERS, UNDER THE ACT OF 1779.

Conilla *vs* Briscoe, H. 43, October 1793; Kenton *vs* M'Connell, H. 134, October 1799; M'Nitt *vs* Logan, October 1808.

CHALLENGE, [of jurors.]

Combs *vs* Slaughter, 1806; M'Kinley *vs* Smith, October 1807.

CHANCERY.

Hart *vs* Baylor, May 1800; Robinson *vs* Gordon's heirs, October 1800; Davis *vs* Ridgley and Watkins, 209, October 1802; Smith *vs* Durrett, 278, May 1803; Lee *vs* Vaughan and Gullion, 281, May 1803; Dickerion *vs* Morgan, 366, April 1804; Beard *vs* Geran, April 1805; Read *vs* Lansdale, April 1805; Francis *vs* Hazlerigg's executors, April 1806; Dale *vs* Cook, and Cunningham *vs* Caldwell, April 1807; Respals *vs* Morton, Myers *vs* Baker and Owlley, Caldwell *vs* Myers and wife, and Jasper *vs* Quarles, April 1808; Littell and Lane *vs* Williams and Caffity, Littell *vs* M'Iver, Hardwicke *vs* Forbes, and Lemon *vs* Cherry, October 1808.

CHANCERY, [PROCEEDINGS IN.]

Briscoe *vs* Troutman, April 1808; Buford *vs* Buford, Scott *vs* Clarkfon's executors, October 1808.

CHANGE OF VENUE.

Owens *vs* Owens, and Ship *vs* Gale, October 1807; Woods *vs* Patrick and Wire, April 1808.

COMMISSIONERS, [under the act of 1779.]

Bryan and Owings *vs* Wallace, 14, April 1801.

COMMON ORDER.

Campbell *vs* Adams, 24, April 1801; Dougherty *vs* Morrison, 314, June 1803.

COMMONWEALTH,

Clarke and *alias* *vs* Patrick and wife, 58, July 1801.

COMMUTATION.

M'Connell *vs* Dunlap, October 1805.

COMPETENCY, [of witnesses.]

Day *vs* Green, April 1807; Wright *vs* Nichols, October 1808.

COMPROMISE.

Taylor *vs* Patrick, October 1808.

COMPUTATION OF TIME.

Woods *vs* Patrick and wife, April 1808.

CONCLUSIVENESS OF RECORDS.

Commonwealth *vs* Ditto, April 1808.

CONDITION.

Welch *vs* Davis, 60, July 1801; Ellis & *alias* *vs* Obannon, 73, August 1801.

CONDITIONS PRECEDENT.

Fleming *vs* Chinoith, 25, July 1801; Horine *vs* Woods, 276, May 1803.

CONFIRMATION.

Taylor *vs* Patrick, October 1808.

CONSIDERATION.

Frazier *vs* Steele, 397, May 1804—Hancock *vs* Vawter, April 1808.

CONSTITUTION.

Enderman *vs* Ashley, 65, July 1801—Cald-

well *vs* the commonwealth, 151, April 1802—*McIlvain & alias vs* Homes and *alias*, 378, May 1804.

CONSTRUCTION.

Gaunt *vs* Bockman, April 1808—Hardin *vs* Owings, October 1808.

CONTEMPT.

Clay *vs* the quarter session court of Fayette, 221, November 1803.

CONTRACT.

Mitchell *vs* Ririe, May 1800—Meaux *vs* Helm, 297, June 1803—Brown *vs* Roland & Radcliff, November 1803—*McDermid vs* *McCastland*, and Cullum *vs* *McCastland*, April 1805—Hubbard *vs* Prather, and Smiley, and Tremmell *vs*, Roberts, October 1808.

CORONER.

Bradford *vs* Boggus, April 1808.

COSRS.

Hill *vs* Lewis, 381, May 1804—Bradford *vs* Allen, April 1805—Logan *vs* Gibbs, April 1805—Hayden *vs* Herbert, October 1807.

COUNTY COURTS.

Read *vs* Gray and Cox, October 1794—Palmer *vs* Craddock, 214, October 1802—Plummer *vs* Shannon, 283, May 1803—Marshall *vs* the commonwealth, 389, May 1804—Bradley *vs* Tompkins, April 1808.

COUNTY COURT PRE-EMPTIONS.

Nichols *vs* Wells, 301, June 1803—Ward and Kenton *vs* Lee, assignee of Young, October 1808.

COURSE.

Johnson *vs* Brown and Breckenridge, 63, July 1801—Beckly *vs* Bryan and Randle, 108, November 1808—Morrison *vs* Coghill's legatees, 383, May 1804—Helm *vs* Small, April 1808.

CRIMINAL PROSECUTIONS.

McCullough vs the commonwealth, April 1807.

D.

DAMAGES.

James *vs* Tarlton, 148, April 1803—Green *admx. vs* Gill, 320, November 1803—Pope *vs* Campbell, October 1805, Mudd *vs* Philips, April 1808.

DEBT.

Dorsey & *alias vs* Lawrence and company, April 1808.

DECEIT.

Baldwin *vs* West, April 1806.

DECLARATION.

Love *vs* Rice, October 1796—Winters *vs* Barr, May 1798—French and *alias vs* Caldwell, May 1798—Tomplaine *vs* *Mc*

Bride, October, 1798—Overton *vs* Meaux, October 1799—Vance *vs* *McBride*, October 1800—Pollock *vs* Colglazure, 9, March 1801—Bliss *vs* Townsend, 23, April 1801—Burbage & *alias vs* Bullitt & *ux.* 31, July 1801—Batts *vs* Gordon, August 1801—Hamilton *vs* Forbes, 107, November 1801—rabtree *vs* Pemberton, 143, April 1802—Chambers *vs* Winn, 194, June 1802—Dickerfon *vs* Netherland, 222, November 1802—Reading *vs* Hickman, 253, April 1803—Todd *vs* *McClenahan*, 360, December 1803—Logan *vs* Marshall, 362, April 1804—Griffith *vs* Buckner, Tunstall *vs* Barbour and Fenwick *vs* Peart, April 1805—Letcher *vs* Taylor, April 1807—Keeton *vs* Scantland, October 1807—Bruner *vs* Stout, April 1808—Brown *vs* *McConnell*, and Watson *vs* Mitchell, October 1808.

DEED.

Morton *vs* Waldhryn, 137, April 1802—Saunders *vs* *McCracken*, April 1808.

DEMAND.

Harris *vs* Blackburn, May 1800—Chambers *vs* Winn, 194, June 1802; Bridges *vs* Hardgrove, 153, April 1802; Vanarsdale *vs* Craig, 321, October 1803; Keeton *vs* Scantland, October 1807; Slack *vs* Price Tunstall *vs* *McClelland*, and Worley *vs* Mourning, October 1808.

DEMURRER.

Littell *vs* Hord, April 1807; Hancock *vs.* Vawter, April 1808.

DEPUTIES.

Gay *vs* Caldwell, October 1806; Bradley *vs* Tompkins, April 1808.

DETINUE.

Tunstall *vs* *McClelland*, October 1808.

DEVASTAVIT.

Walker *vs* Kendall, April 1808.

DEVISE.

Hart *vs* Baylor, 99, November 1801; Innes *vs* Lyne's legatees, December 1803.

DISCOUNTS.

Ballenger *vs* Worley, October 1808.

DISCRETION.

McClelland vs Hobbs, April 1805; commonwealth *vs* Barry April 1808.

DISTANCE.

Johnson & *alias vs* Brown and Breckenridge, 62, July 1801; Beckley *vs* Bryan and Randle, 109, November 1801; Robards *vs* Huff, April 1808.

DISMISSION.

Davis *vs* Welch, October 1807.

DISTRESS.

Tunstall *vs* *McClelland*, April 1806; Gano *vs* Hart, April 1808; Dimmett *vs* Trapnall, October 1808.

DOWER.

Winn vs Elliott, April 1808.

E.

EJECTMENT.

Quarles vs Brown and Melton, 238, November 1802; Shuit vs Travis, 363, April 1804; Talbot vs Callaway, October 1805; Thomas vs Thomas, October 1808.

ELECTION.

M'Cracken's widow and devisees vs Finley, 228, November 1802; M'Connell vs Dunlap, October 1805.

EMANCIPATION.

Beall vs Negro Joseph, April 1806.

ENDORSEMENT.

Meaux vs Rutgers, 341, November 1803.

ENGLISH AUTHORITIES.

Williams vs Hedrick, 203, June 1802.

ENTRIES FOR LAND, construction of.

Herndon vs Hogan H. 2, November 1786; Pawling vs Merriwether's heirs, H. 14, June term 1789; Hite vs Harrison, same vs Stevenson, H. 15 & 16, September 1789; Smith vs Grimes, H. 18; Walker vs Orr, H. 19, June 1790; Confilla vs Briscoe, H. 43; Swearingen vs Briscoe, H. 47, both of October 1793; Fry vs Eflery, H. 53; Bryant and Smith vs Bradford, H. 55, May 1795; Smith vs Evans, H. 88, August 1795; Sinclair vs Singleton H. 92; same term, Cleland vs Thorp, Bradfords vs M'Clelland, H. 100, October term, 1798, H. 102; Greenup vs Coburn, H. 104, October 1799; —Kenny vs Whitledge, H. 110, October 1799; Kenton vs M'Connell, H. 134, same term, M'Clenahan vs Litton, H. 178, same term; Carter vs Oldham, H. 181, May 1800; Bryant and Owings vs Wallace, H. 194, March 1801; South vs Bowles, 32, July 1801; Bradford vs Allen, 51, July 1801; Johnson & alius vs Brown & Breckenridge, 63, July 1801; Woods vs Patrick & wife, 66, July 1801; Kenny vs Clinckinbeard, 101, November 1801; Gaither vs Tilford, May 1802; Tandy's heirs vs Bledsoe, 232, November 1802; M'Dermid's heirs vs Lee, 234; Hite vs M'Clenahan, 239, November 1802; Ramsey vs Logan; Moore's heirs vs Green, October 1805; Smith vs Morrow & Trimble, April 1806; Key vs Matton, October 1806; Taylor vs Kindald, Patterson's devisees vs Bradford, Respays and Melton vs Arnold, April term 1807; Craig and Johnson vs Doran and Ashley, October 1807; Bosworth vs Maxwell, Robards vs Huff, Mofeley and

and Craig vs Cogan, and Crow's heirs vs Harrod's heirs, April 1808; Craig vs Hawkin's heirs; M'Cracken's heirs vs Steele and Searcy; Cleland's heirs vs Weedon's devisees, Williams vs Taylor, Craig vs Machir, Ward and Kenton vs Lee, assignee of Young, October 1808.

EQUITY.

Cotton vs Reed's executors, 33, July 1801; Rhea and Ormsby vs Yoder, 103; Beckley vs Bryan and Ransdale, 112, November 1801; Short vs Jackson & alius, 224, November 1802; Meaux vs Helm, 297, June 1803.

ESCAPE.

Grimes vs Butler, October 1808.

ESCHEAT.

Craig vs Trustees, &c. 181, May 1802.

EVIDENCE.

Confilla vs Briscoe, H. 43, October 1793; Barrett vs Meek & alius, 44, July 1801; Rhea and Ormsby vs Yoder, 102, November 1801; Brown vs Crow's heirs, 125; Williams vs Hedricks, 204, June 1802; Bedford vs Moore, and Nicholas vs Lantdale, April 1805; M'Vicker vs Anderson, October 1805; Robinson vs Morgan, April 1808; Gift vs Higgins, Cleland's heirs vs Weedon's devisees, and Wilton vs M'Gee, October 1808.

EXCHANGE.

Overton vs French, 340, November 1803.

EXCUSE.

Clarke & alius vs Patrick & ux. 58, July 1801; commonwealth vs Barry, April 1808.

EXECUTION.

Wilkinson vs Marshall, May 1794; Berry vs Keaton, 82, April 1801; Fields vs Whitaker, 210, October 1802; Hawkins vs Craig, 223, November 1802; Gano vs Davis, 242, November 1802; Green, adm'x vs Gill, 320, November 1803; Glen vs White, 331, November 1803; Ethill's heirs vs Lewis, 408, October 1804; Grant and Graves vs Boyd, 413, January 1805; Lynch vs Agun, October 1806; Scott vs Maupin, April 1807; Downing vs. Brown and Barbee, Craig vs Johnson, Buckner vs Terrell, & Faught vs Byrne, April 1808; Hatcher vs Kelly & Brent; M'Clelland & Bruner vs Lillard, and Love vs Clay, Oct. 1808.

EXECUTORS.

Hawkin's executors vs Glafs, October 1808.

EXECUTOR'S SALES.

Stamps vs Beatty, April 1808.

F.

FAILURE OF RECORD.

Walker vs Kendall, April 1808.

FEE-BILLS.

Morgan vs Craig, April 1807.

FEES, PRISON.

Fields vs Slaughter, October 1808.

FERRY.

Taylor vs Baffle, May 1798; Patrick vs Bush, 31, August 1801; Martin vs M^c. Kinney, May 1804.

FOREIGN JUDGMENTS.

Roger's vs Coleman, April 1808.

FOREIGN LAWS.

Bezuchamp vs Mudd, October 1807.

FORFEITURE.

Morgan vs Peannybaker, H. 1, September 1785.

FRAUD.

Jackson & Owings vs Wilton & wife, H. 64, May 1795, same vs Whitaker, H. 71 —same term, Bradley vs Buford, 22, April 1801; Bibb vs Prather *et al.* 158, May 1802; Piles vs Shannon, April 1805 & April 1806; Waters vs Mattingly, October 1808.

FRAUDS, STATUTE OF.

Grant's heirs vs Craigmiles, October 1808.

G.

GENERAL COURT.

Lindsay & *als.* vs M^cCllelland, October 1808.

GENERAL PRINCIPLES.

Patterson's devisees vs Bradford, April 1808.

GIFTS OF SLAVES.

Gaunt vs Brockman, April 1808.

GRAND JURORS.

Elack vs Sugg, April 1808.

GRANT.

Beckley vs Bryan & Ransdale, 112, November 1807; Craig vs Trustees &c. 180, May 1802.

GUARDIANS.

Patrick vs Woods, October, 1808.

H.

HEARSAY EVIDENCE.

Cherry vs Steele, May 1800.

HEIRS.

Eskill's heirs, &c. vs Hoy's executors, April 1807.

HISTORY.

Hart vs Bodley &c. April 1807.

I.

IMMATERIAL ISSUE.

Worley vs Murley, October 1808.

IMPLICATION.

Cleland's heirs vs Weedon's devisees, October 1808.

IMPROVEMENT.

Hart vs Baylor, April 1808.

INDICTMENT.

M^cCullough vs commonwealth, April 1807.

INFANCY.

Clarke & *als.* vs Patrick & wife, 58, July 1801.

INFANTS.

Grants heirs vs Craigmiles, October 1808.

INJUNCTIONS.

Carland vs Irvine, 7, March 1801; Bradford & wife vs Allen, and Beard vs Geran, April 1805; Caley vs Roberts and Lanigale, April 1806.

INNUENDO.

Caldwell vs Abba, April 1808.

INTEREST.

Lanier vs Grant, October 1794; Winters vs January, October 1800; Pollock vs Colglazure, 8, March 1801; Rhea and Ormby vs Yoder, 102, November 1801; Morehead vs Prather, 156, May 1802; Dicken vs Dicken, 201, June 1802; Lynch vs Freeland 317, June 1803; Chambers vs Query, 321, October 1803; Smithers vs Gough, 412, January 1805; Handley vs Hughes, April 1805; Taul vs Moore, April 1807; South vs Leavy, & Bennett vs Holmes, April 1808; Johnson & *als.* vs the commonwealth, October 1808.

J.

JEOFAILS.

Lynch vs Tidball, May 1800; Wilson vs M^cCoun, October 1800; Sullivant vs Shaw, 45, July 1801; Griffith vs Buckner, and Craig vs Brooke, 1805; Robinson vs Morris, April 1807; Morrison ex'r. vs Hart, October 1807; Churchill vs Rogers, April 1808, and Thomas and Pattie vs Morford, October 1808.

JUDGMENT.

Rennick vs Hoffman, May 1797; Adair & Lynch vs Shelby; Crittenden and Turpin vs Lynch; Gaither vs Smith, and Fowler vs Berry, all in October 1799; Allen vs Blythe, May 1800; Hunt vs Scott, October 1800; Pollock vs Colglazure, 9, March 1801; Morrow & *als.* vs commonwealth, 56, July 1801; Fowler vs Cowper, and Fowler vs Prowit, 71, August 1801; Speed vs Wilson, 96, November 1801; French vs Edill, 132, April 1802; Jackson vs Motley, 155, May 1802; Irvine vs Earle, 170, May 1802; Lynch vs Barr, June 1802; Vanarsdale vs Craig, October 1803; Smithers vs Gough, January 1805; Render vs Pemberton, Oc-

tober 1806; Berry vs Cunningham, and Robinett vs Morris, April 1807; M'Clean and Bruner vs Lillard, Satterwhite vs Lewis, and Payne vs Lewis, October 1808.

JURISDICTION.

Johnson vs Moore, May 1793; Lightfoot vs Peyton, April 1805; Kennedy vs Terrell, April 1808; Smith vs Carr, April 1808.

JURY.

Williams vs Cheek, 76, August 1801; Hays vs Barnett, 333, November 1803.

JUSTICES, [County Court.]

Bartlett vs justices of Franklin, 27, September 1802.

JUSTIFICATION, [Plea of.]

Singleton vs Pattie, May 1793.

LANDS, liability of, to payment of debts. Thomas vs Marshall, April 1805; Buford vs Buford, October 1808.

L.

LAWS.

Kennedy vs justices of Madison, October 1794; Grubs vs Hoy's executors, October 1795; Stidgers vs Rodgers, 64, July 1801; Enderman vs Ashley, 65, July 1801; Berry vs Keaton, 82, August 1801; Caldwell vs the commonwealth, 151, April 1802; Brown vs Rowland & Radcliff, November 1803. See Frauds, statute of—and Limitation, act of.

LEX LOCI.

M'Knitt vs Logan, October 1808.

LIEN.

Francis vs Hazlerigg's executors, April 1806; Harrison vs Hobbs, October 1808.

LIMITATIONS, (Act of.)

Taylor's executors vs Sullivan, April 1805; Singleton vs Lewis, and Bell vs Roland's administrator, and Watson vs Anderson, April 1808.

LINES.

Logan vs Boyd and Breckenridge, 207, June 1802.

LOCATIONS.

Bradford vs Allen & *als.* 52, July 1801; Lillard's administrators vs Taylors executors, April 1803.

LOST LINES.

Beckley vs Bryan and Ranfale, 107, November 1801.

M.

MAGISTRATE.

Threshly vs Fisher, April 1808.

MALICIOUS PROSECUTION:

Froman vs Smith, May 1800.

MANDAMUS.

Kennedy vs justices of Madison, October

1794; Simpson vs the register, 260, April 1803; Sanders vs the Nelson circuit court, April 1805; Barnett and Hutchinson vs the Warren circuit court, October 1807; Morgan vs the register, April 1808.

MERIDIAN.

Johnson & *als.* vs Brown and Breckenridge, 61, July 1801.

MERCY.

Commonwealth vs Barry, April 1808.

MILLS.

Obannon vs Jackson, 235, November 1802; Gay vs Caldwell, October 1806.

MINUTES.

Forbes vs Hamilton, 105, November 1801.

MORTGAGE.

Read vs Landale, April 1805; Slane vs Wells, April 1806; Adams vs Essex, October 1808; Hughes and Ballenger vs Worley, same term.

MOTIONS.

Morrow & *al.* vs M'Kinney, 75, August 1801; Phelps vs Burton, and Kennedy vs Beard and Owen, 344, 345, November 1803; Penn. adm'x. vs Emerson, M'Clelland vs the governor for Owers, Commonwealth vs M'Clelland, and Ewing vs the directors of the penitentiary, April 1805; Tennell vs Dozier, April 1806; Price vs the Shelby circuit court, Query vs Prather adm'x. Bennet vs Holmes, and Morrow & *co.* vs Brand and Byers, April 1808; Mars vs Buckler, M'Kinney vs Scott, and Hardwicke vs the Montgomery justices, October 1808.

MOTIVES.

Commonwealth vs Barry, April 1808.

N.

NAME.

Robinson vs Morgan, 276, May 1804.

NEGLIGENCE.

Rogers vs Campbell, May 1794; Handley vs Pope, May 1796; Harlett vs Reading, October 1800.

NEW TRIAL:

Shipp vs Radcliff, 222, November 1802; Duncan vs Finnyhorn, 309, June 1803; Hutcheson vs Forbes, 381, May 1804; Owens vs Owens, October 1807; M'Kinley vs Smith, same term; Hatcher vs Ried, Taylor vs Gyger, April 1808; Gift vs Higgins, Slack vs Price, and Worford vs Ifbell, October 1808.

NEUTRAL ACT.

Commonwealth vs Barry, April 1808.

CONSUIT.

Johnson vs Brown, May 1800; Carneal vs

Grant, April 1805; Watfon vs Anderson, April 1808; Haydon vs Lockhart's administrators, October 1808.

NOTICE.

Hoy vs Boggs, H. 1, June term, 1785; Smith & Bryan vs Bradford, H. 55, May term 1795; Roberts vs West, May 1798; Floyd vs Black, October 1800; Johnson vs Rowland, 90, August 1801; Pope vs commonwealth, 141, April 1802; M^c. Dowell vs Machir, 169, May 1802; Ratcliff vs county court of Fayette, 292, May 1803; M^cClenahan vs Respais, 326, October 1803; M^cGready and *al.* vs M^c. Clean, April 1808; Lynch vs Johnson, same term; Woodrough vs Perkins, M^c. Nitt vs Logan, Johnson & *al.* vs the commonwealth, and Crozier vs Gano, all of October, 1808.

NOTORIETY.

Myers vs Speed, H. 95, October term, 1795 — M^cClenahan vs Berry, H. 170, October 1799; Speed vs Wilton, 92, November 1801; Watkins vs Moore, 391, May 1804; Frazier vs Steele, 396, May 1804; Moore's heirs vs Green, October 1805; Moore vs Whitledge & Reno, April 1807 — Craig vs Baker, April 1808; Ward & Kenton vs Lee, assignee of Young, October 1808.

NUL TIEL RECORD, [plea of.]

Walker vs Kendall, April 1808.

O.

OCCUPYING CLAIMANTS.

Johnson vs Rowland, 90, August 1801; Rowland's heirs vs Craig and Johnson, 392, May 1804; Whitledge vs Wait's heir, 397, May 1804; Ehill vs Willhite, April 1808; Bodley vs Craig, October 1808.

OFFICE-JUDGMENT.

Kyle vs Conn, 218, October 1802 — See common order and judgment.

OMISSION.

Beckley vs Bryan and Ransdale, 107, November 1801.

ONUS PROBANDI.

Black vs Samuel, October 1798.

ORDER OF SURVEY.

Meredith vs Clarke, October 1800.

ORPHANS.

Curry vs Jenkins, April 1808.

OVER.

Palmer and Casey vs M^cGinnis, Fenwick vs M^cGinnis, Ralston vs Love, and Bais and M^cClelland vs Strong, April 1808.

P.

PANNELL.

Commonwealth vs Barry, April 1808.

PAROL EVIDENCE.

Confilla vs Briscoe, H. 43, October term 1793; Cherry vs Steele, May 1800; Brown vs Rowland and Radcliff, November 1803; Query vs White, October 1808.

PETITION AND SUMMONS.

Rodgers vs Ellis, October 1808.

PLEADING.

Singleton vs Pattie, and Buford vs Talbot, May 1793; Lee vs grant, May 1794; Batter vs Jones, and Cleveland vs Cleveland, October 1794; Blane vs M^cWhirter, May 1798; Strickland vs Hoyt, Merrifield vs Yocum, Stewart's legatees vs Trabue, Sullivan vs Vanmetre and Demot vs Gritton, May 1800; M^cCoun vs Hansford, and Clarke vs Shannon, October 1800; Goodloe vs Chapman, 266, April 1803; Brashear vs Shepherd, 294, June 1803; Young & *als.* vs Sciton, 330, October 1803; Conn vs Jones, April 1805; Smith vs Curd, October 1805; Sloane vs M^cClelland, April 1806; Kender vs Pemberton, and Gano vs slaughter, October 1806; Churchill vs Rogers, Hubble vs Mulanphy, Palmer and Casey vs M^cGinnis, Dorley, &c. vs Lawrence and company, April 1808; Forbes's adm^rs. vs Scoby, Slack vs Price, Patton vs Robinson, Violet vs Dale, M^cClean vs Bruner, Satterwhite vs Lewis, Payne vs Martox, Pringle vs Samuel's adm^rs. Richard's adm^rs. vs Allen, Moore vs Morton, and Worley vs Mourning, October 1808.

PLEADING IN ABATEMENT.

Moore vs Morton, October 1808.

PLEA OF TENDER.

Slack vs Price, and Sobk vs Knowlitz, October 1808.

POSTSCRIPT.

Beard vs Grundy's devisees, 196, June 1802.

POWERS OF THE LEGISLATURE.

Baylor vs Hart, 147, April 1802.

PRACTICE.

Cleveland vs Barr, May 1797; Oharra & *al.* vs Sullivan, May 1798; Smith vs Black, October 1798; Merrifield vs Yocum, and Lemon vs Darby, May 1800; Craig vs Lexenby, Jackman vs Fisher, Saunders vs Saunders, Holmes vs Clifford, Edwards vs Metcalfe, and Irvine vs Carland, October 1800; Stoker vs Payne, 47, Welch vs Davis, 60, July 1801; Handley vs Tra-

vis, 161, Ayres *vs* Scott, 187, May 1802 ;
Beall *vs* Mansell, 236, November 1802 ;
Goodloe *vs* Chapman, 265, April 1803 ;
Orr *vs* Bobb, 289, May 1803 ; Groshon
vs Grant, 315, July 1803 ; Russell *vs*
Hart and co. 365, April 1804 ; M'Neely
vs Boals, April 1805 ; Saunders *vs* the
Nelson circuit court, Craig *vs* Brooke,
Blair and Gano *vs* Bristoe, and Palmer *vs*
Young, same term, Salts *vs* Jenkins,
Higgins & *al.* *vs* Lillard's executors,
Owings *vs* Beall, Blanton *vs* Brecken-
ridge's executors, April 1806 ; Wilson *vs*
Hazlerigg's executors, Price *vs* Caldwell,
Scott *vs* Curd, October 1806 ; Jones *vs*
M'Kinney, and Roberts *vs* Swearingen
and Forbes, April term 1807 ; M'Gehee
vs Stafford and Violet, Keeton *vs* Scant-
land, Owens *vs* Owens, Lansdale *vs* Fin-
ley, Beauchamp's adm'r. *vs* Mudd, Trigg
vs Shields, Coleman *vs* Hamilton circuit
court, October 1807 ; Burton *vs* Chinn's
adm'r's M'Clelland *vs* the commonwealth,
Speed *vs* Lewis, Bradley *vs* Tompkins,
Commonwealth *vs* Barry, Cravens *vs*
Broadnax, Hancock *vs* Vawter, Bradley
vs Steele, Tunstall *vs* Barbour, Greenup
vs Renix, Kennedy's heirs *vs* Duncan,
Scantland *vs* Brinker, Clarke *vs* Davis,
Brown *vs* Crow's heirs, April 1808 ;
Brown *vs* M'Connell, Woodrough *vs* Per-
kins, Barr and Yeizer *vs* Stevens, &c.,
Sook *vs* Knowles, Craig *vs* Horine,
Owings *vs* Trotter and Scott, Callatin *vs*
Bradford, and Rumsey *vs* Matthews, Octo-
ber 1808.

PRE-EMPTIONS.

Young *vs* M'Kee, H. 35, March term 1792 ;
Bristoe *vs* Speed, H. 41, October term
1793 ; Woods *vs* Patrick and *ux.* 67,
July 1801 ; Greenup and Keene *vs* Ken-
ton, April 1805 ; Patterson's devisees *vs*
Bradford, April 1807 ; Alstads *vs* Miller,
April 1808 ; Ward and Kenton *vs* Lee
assignee of Young ; Fitch's devisees *vs*
Bullock, October 1808. See county
court pre emptions and pre-emption war-
rants.

PRE-EMPTION WARRANTS.

Waits *vs* Whitledge, 39, July 1801.

PRESENTMENTS.

Louden *vs* commonwealth, 413, January
1805.

PRESUMPTION.

Morgan *vs* Robinson, 272, March 1803 ;
Martin *vs* M'Kinney, 380, May 1804 ;
Hart *vs* Bodley, April 1807 ; Hickman
vs Boffman, April 1808.

PROMISSORY NOTES.

Boals *vs* M'Connell, 153, April 1802.

PROSECUTOR.

Bartlett *vs* Humphries, April 1808.

PROTESTATION.

Richard's adm'r's *vs* Allen, October 1808.

PURCHASERS.

Ward *vs* Kenton, 10, April 1801 ; Hag-
gan *vs* Wood's heirs, 323, October 1803 ;
Stamps *vs* Beatty, April 1808 ; M'Knitt
vs Logan, October 1808.

Q.

QUANTUM DAMNIFICATUS.

M'Connell *vs* Dumlap, October 1805.

R.

RECAPTION.

Bobb *vs* Bofworth, October 1808.

RECEIPT.

Winters *vs* January, October 1800.

RECOGNIZANCE.

Griffin *vs* commonwealth, April 1808.

RECORDS.

Forbes *vs* Hamilton, 106, November 1801.

RECOURSE.

Radcliff *vs* Ship, April 1808.

RE-HEARING.

Cleland's heirs *vs* Weeden's devisees, Octo-
ber 1808.

RELEASE.

Forbes *vs* Hamilton, 106, November 1801 ;
Halley *vs* Mansell, 240, November 1802 ;
Horine *vs* Woods, 277, May 1803 ;
Reading *vs* Metcalfe, April 1808.

RENT.

Rector and Clarke *vs* Gale, April 1807.

RENTS AND PROFITS.

Hart *vs* Baylor, April 1808.

RENUNCIATION.

Hunter and Todd *vs* Bryant, April 1808.

REPLEADER.

Singleton *vs* Pattie, May 1793.

RESERVATION.

Piles *vs* Shannon, April 1806.

RE-SURVEYS.

Efill *vs* Hart's heirs, April 1808.

RIGHT.

Craddock *vs* Croghan, 119, November
1801.

RIGHT BY DESCENT.

M'Nitt *vs* Logan, October 1808.

ROADS.

Grimes *vs* Doyle, 70, July 1801 ; Barr
and Yeiser *vs* the county court of Fayette,
October 1808.

RULES, [taken in the clerk's office.]

Thomas and Pattie *vs* Morford, October
1808.

S.

SCIRE FACIAS.

Russell *vs* Hart and co. 366, April 1804.

SECURITIES.

Dorsey *vs* Beall, April 1808.

SECURITY FOR COSTS.

Ware *vs* Biggerstaff, May 1799; Lewis *vs* Kennedy, October 1800; Barnett and Hutchinson *vs* the Warren circuit court, October 1807; Wheeler *vs* Kirtley, April 1808.

SETT-OFF.

Caldwell *vs* Grundy, 264, April 1803; Dickerfon *vs* Nabb's adm'r. 378, May 1804; Hawthorne *vs* Roberts, October 1806; Morrison ex'r. *vs* Hart, October 1807, and Burton *vs* Chinn's adm'r's, April 1808.

SETTLEMENTS, [under the act of 1779.]

Dougherty *vs* Crow, H. 21, October term 1791; Conilla *vs* Briscoe, H. 43, October term 1793; Kenton *vs* M'Connell, H. 134, October term, 1799; Johnson *vs* Nall, 393, May 1804.

SETTLEES, [under the Kentucky landlaw]

Jasper *vs* Quarles, April 1808.

SEVERANCE.

Daniel *vs* Pogue, 115, November 1801.

SHERIFF.

Burke *vs* justices of Green, October 1795; Graves *vs* Waller, 149, April 1802; Ewing *vs* Thompson, 150, April 1802; Palmer *vs* Craddock, 214, October 1802; Dougherty *vs* Morrison, 114, June 1803; Johnson *vs* Ellis, April 1806.

SHERIFF'S RETURN.

Morford *vs* Thomas, 251, April 1803; Dailey *vs* Palmer, April 1808.

SLANDER.

Wilson *vs* Dorsey, May 1800; Brashear *vs* Shepherd, 294, June 1803; Caldwell *vs* Abbey, April 1808, and Hume *vs* Arrowsmith, October 1808.

SLAVES.

Dailey *vs* Palmer, April 1808; Caldwell *vs* Myers & ux. same term.

SUMMARY PROCEEDINGS.

Martin *vs* M'Kinney, 380, May 1804.

SUPERSEDEAS.

Flowers *vs* Fletcher, 264, April 1803; Smith *vs* Caldwell, June 1804; Hayden *vs* Herbert, October 1807.

SUPREME COURT.

Young and *als.* *vs* Boston, October 1803.

SURETY.

Lansdale *vs* Graves, 252, April 1803.

SURPLUS.

Dougherty *vs* Crow, H. 21, October term

1791; Beckley *vs* Bryan & Lansdale, 107, November 1801.

SURVEYS.

Kenton *vs* Ward, 10, and Neale *vs* Holt, 13, April 1801; Moore *vs* Randolph and Harris, 26, and Kilgore *vs* Kelly, July 1801; Jones's heirs & legatees *vs* Taylor's heirs, and H. Lee, 83, August 1801; Crow's heirs *vs* Brown, 119, November 1801; Lillard's adm'r's *vs* Taylor's heirs 247, April 1803; Craig *vs* Pelham, 286, May 1803; Johnson *vs* Nall, 394, May 1804; Hickman *vs* Boffman, April 1808.

SURVEYORS.

Jones's heirs and legatees *vs* Taylor's heirs & H. Lee, 83, August 1801.

SURVEYOR'S FEES.

Jones *vs* Kenney, April 1807.

T.

TAX, DIRECT.

Johnson *vs* M'Intire, October 1808.

TENDER.

See plea of Tender.

TIME.

Tunfall *vs* M'Clelland, April 1808; Woods *vs* Patrick and wife, October 1808.

TRANSFER.

Ward *vs* Kenton, 10, April 1801.

TRESPASS.

Williams *vs* Hedricks, 204, June 1802.

U.

USURY.

Reed *vs* Lansdale, April 1805; Tardeveau and Innes *vs* Smith, October 1807.

V.

VARIANCE.

Fowler *vs* Cooper, 71, August 1801; Edwards *vs* Can, 73, August 1801; Scott *vs* Taylor & ux. 114, November 1801; Reading *vs* Hickman, 253, April 1803; Foxwell *vs* Fugate, and Pemberton *vs* Scarce April 1805; Hanks *vs* Evans, April 1806; Palmer *vs* Casey & M'Ginnies, April 1808.

VERDICT.

Jouitt *vs* Davis, October 1794; Buford *vs* Talbot, & More *vs* Hawkins, October, 1799; Sullivan *vs* Vanmetre, May 1800; Daniel *vs* Bush, October 1800; Dawson *vs* Barnes, 54, and Roundtree *vs* Roundtree, 69, July 1801; Allison *vs* Faulkner, April 1806; Dougherty *vs* Glenn, April 1808; Crezier *vs* Gano, October 1808.

VERDICT, [in Chancery.]

Owens *vs* Owens, October 1807.

VIRGINIA RIGHTS.

Jasper *vs* Quarles, April 1808.

W.

WAIVER.

M'Kinney vs Scott, October 1808.

WARRANT, [Land.]

Jones's heirs and legatees vs Taylor's heirs and H. Lee, August, 14, 1801.

WARRANTY.

Steele vs Mitchell, 48, July 1801; Cowan vs White, 177, May 1802; Short vs Jackson and Young, 224, November 1802; Harland's heirs vs Eastland, April 1808.

WIDOW.

Nicholas vs Nicholas's ex'rs. 402, June 1804.

WILLS.

Hare vs Bryant, 317, June 1803; Linginfelter vs Linginfelter, April 1807.

WITNESS.

Barrett vs Meek and Beatam, 44, July 1801

— Morton vs Waldrhyn, 139, April 1802

— Kennedy vs Barnett, October 1808.

WORDS.

Wallace vs Grant, 80, August 1801.

WRIT.

Adams vs Colhoon, May 1800; Ewing vs Thompson, 150, April 1802; Owens vs Pennebaker, 338, November 1803; Conn vs Jones, April 1805.

WRIT OF ENQUIRY.

Hanks vs Evans, April 1806; Adams vs Bradshaw, April 1808.

WRIT OF ERROR.

Johnston vs Moore, May 1793; Moody vs Head, 394; Adams vs commonwealth, 395, August 1804.

WRIT OF ERROR CORAM VOBIS.

Lanfdale vs Finley, October 1807—Lynch vs Buck and Brander, April 1808.